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In The

Supreme Court of the United States

FALL TERM, 1968

~~211~~

LOUIS ANTHONY LOGNER

Respondent

v.

STATE OF NORTH CAROLINA

Petitioner

PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Your Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals in the case of LOUIS ANTHONY LOGNER vs. STATE OF NORTH CAROLINA, entered on March 21, 1968.

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circiut is reported as LOUIS ANTHONY LOGNER v. STATE OF NORTH CAROLINA, ... F. 2d ..... (4th Cir. 1968) and is printed as Appendix D to this petition.

JURISDICTION

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit was entered on March 21, 1968. (See Appendix D).

The jurisdiction of this Court is invoked under 28 United States Code, Section 1254 (1).

QUESTIONS PRESENTED

I. WHETHER OR NOT A CONFESSION TO CRIME OFFERED BY AN INDIVIDUAL OF HIS OWN VOLITION, WHILE IN CUSTODY FOR AN UNRELATED OFFENSE, AND IN THE ABSENCE OF COERCION IN ANY FORM, BECOMES INVOLUNTARY AND THEREFORE INADMISSIBLE DUE TO THE FACT THAT SAID PERSON WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR AT THE TIME HE ELECTED TO ADMIT GUILT?

II. WHETHER SECTION 2254, TITLE 28, UNITED STATES CODE, AS AMENDED EFFECTIVE NOVEMBER 2, 1966, IS CONTROLLING UPON THE DECISION IN THE CASE AT BAR? AND IF IT IS SO CONTROLLING, THEN DID THE FEDERAL DISTRICT COURT EXCEED ITS STATUTORY JURISDICTION AND POWER?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides as follows:

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution of the United States provides as follows:

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

STATUTORY PROVISION INVOLVED

Section 2254, Title 28, United States Code, as amended effective November 2, 1966, provides as follows:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of

a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the state or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the fact finding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the sub-

ject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal Court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

(e) If the applicant challenges the sufficiency of the

evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(f) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

STATEMENT OF CASE

Louis Anthony Logner, at the July 28, 1965, Special Session of the Criminal Session of the Superior Court, Durham County, North Carolina, was tried under a Bill of Indictment charging the crime of safecracking, and was convicted by a jury of his peers. The defendant appealed to the Supreme Court of North Carolina, and that Court affirmed the lower Court's decision, finding no errors in the trial. 266 N. C. 238, 145 S. E. 2d 867 (1966). (Appendix A) The defendant then petitioned the Supreme Court of the United States for Certiorari. Certiorari being denied, *LOGNER v. NORTH CAROLINA* 384 U. S. 1013 (1966), Logner proceeded to file a petition with the United States District Court for the Middle District of North Carolina, praying for a Writ of Habeas Corpus. On October

20, 1966, the District Court held an evidentiary hearing to consider petitioner's prayer. An order was entered by the Court on November 29, 1966. The conviction and sentence of the state criminal defendant were vacated, and the Court further declared that unless the State of North Carolina retried Louis Anthony Logner, an order would be issued discharging him from custody. 260 F. Supp. 920, 970 (1966). (Appendix C)

In the interim between the evidentiary hearing and the granting of Habeas Corpus on November 29, 1966, by the United States District Court for the Middle District of North Carolina, Congress, in an effort to handle more expeditiously the number of petitions for habeas corpus by state prisoners amended Sections 2244 and 2254 of Title 28, United States Code. H. R. Rep. No. 1892, 89th Cong., 2nd Sess. 6-7 (1966); 12 *St. Louis U. L. J.* 74, 90 (1967); 34 *Brooklyn L. Rev* 247, 266 (1968). Said amendments effective as of November 2, 1966 embodied in Public Law 89-711, modified the jurisdiction of United States District Courts in cases where individuals in custody pursuant to the judgment of a State Court were applying for Habeas Corpus.

The Solicitor called the case of *STATE v. LOGNER* for re-trial at the April 17, 1967, Criminal Session, of the General Court of Justice, Superior Court Division of Durham County. The Honorable Chester R. Morris, Judge Presiding, declined to retry the defendant, and in addition ordered the Solicitor who had not been a party or served with any notice of the Federal Proceeding, to file a motion in the United States District Court for the Middle District of North Carolina, in order to intervene and have reopened the habeas corpus proceeding in which a decision had been entered earlier. A motion to that effect was filed June 8, 1967. At this time the District Court ordered the Solicitor to submit a brief on the various legal questions involved, and after reviewing the new legal briefs, the contentions of the parties, and the facts as adduced in the State trial, issued an additional Order and Opinion. (Appendix

F). This new, additional Order and Opinion, denied a rehearing, and re-affirmed the original decision.

In the Logner trial certain statements made by the defendant to law enforcement officers of his own volition were admitted into evidence after a full Voir Dire hearing held in the absence of the jury. (Appendix E) The State Court, a Court of competent jurisdiction, after a full plenary hearing on the merits of the factual issue regarding the voluntariness of the defendant's admissions, found as a matter of law and stated also in a written finding of fact, that the defendant's confession was freely, voluntarily, and knowingly made. (Appendix E) Logner's statement was also used as evidence against him in a second state trial for safecracking arising out of another incident. The Supreme Court of North Carolina again reviewed the confession and the circumstances surrounding it, and reaffirmed its previous finding of voluntariness. *STATE v. LOGNER*, 269 N. C. 550, 153 S. E. 2d 63 (1967). (Appendix B)

The United States District Court for the Middle District of North Carolina having found Logner's confession to be involuntary and the highest Court of the State of North Carolina having rendered two decisions *contra*, the State of North Carolina therefore decided to appeal to the United States Court of Appeals for the Fourth Circuit. On March 21, 1968, that Court, held that the record revealed no errors in either order and decision issued by the District Court. (Appendix D) From this adverse decision of the United States Fourth Circuit Court of Appeals, the State of North Carolina respectfully excepts, and does pray this Court to issue a Writ of Certiorari in order that the vitally important legal questions which currently have resulted in conflicting decisions in various jurisdictions might now be resolved.

REASONS FOR GRANTING THE WRIT

On issue of voluntariness of the confession.

(1) The decision of the United States Court of Appeals for the Fourth Circuit upon the legal question of the constitutional voluntariness of defendant Logner's confessions is *contra* to the two decisions of the North Carolina Supreme Court, made after full consideration of those same admissions.

(2) The holding by the United States Court of Appeals in the case of *LOGNER v. STATE OF NORTH CAROLINA*, is also in conflict with the recent constitutional decision of the highest court of the State of New York in *PEOPLE v. SCHOMPERT*, 19 N. Y. 2d 300, 270 N. Y. S. 2d 515 (1967).

(3) The resolution of the voluntariness issue by the Court of Appeals for the Fourth Circuit in *LOGNER v. STATE OF NORTH CAROLINA* is in conflict with decisions rendered by the United States Court of Appeals for the District of Columbia.

(4) The position taken by the United States Court of Appeals for the Fourth Circuit on the matter of the voluntariness of an uncoerced confession, given by a confessant under the influence of alcohol, which subsequently proves to be truthful and reliable, contradicts other notable state decisions, the spirit of the more stringent, but inapplicable test of voluntariness laid down by the Supreme Court of the United States in *MIRANDA v. ARIZONA*, 384 U. S. 486, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694 (1966), and other authorities and scholars.

1. The decision of the United States Court of Appeals for the Fourth Circuit affirmed *per curiam* the disposition of the Logner case by the District Court for the Middle District of North Carolina and thus accepted *sub silentio* the reasoning employed by the lower court in arriving at the conclusion of law that the confession was involuntary. Apparently the District Court reasoned that when one becomes intoxicated or under the influence of alcohol it follows that he has lost control of his mental faculties and anyone not in full control of such

faculties incapable of giving an admissible confession under the dictates of the privilege against self incrimination in the Fifth Amendment as applied to the states through the Due Process Clause of the Fourteenth Amendment to the Constitution. The two federal courts evidently were convinced that despite the facts that the defendant's drunkenness was self-induced, that the statements he made were volunteered and, indeed, as it appears from the record, the admissions were foisted upon the police, that the confessions were subsequently shown to be reliable and truthful, nevertheless, his words were not the product of "the unfettered exercise of his own will." This is certainly a curious proposition in that, at least, it appears to make it impossible for any person who passes muster under any of the currently accepted legal tests of sanity to admit guilt if his own self induced mental state induces such admissions. To be legally capable of committing a crime and at the same time be legally incapable of confessing it is a bizarre, and therefore doubtful, proposition. Practically, such a holding would serve to exclude confessions of criminals fully aware of what they are saying, and able to meticulously describe criminal acts they have committed, merely because they have consumed enough alcohol to trigger their own incautious tongue. It is unclear from the words of the two federal courts just what effect, if any, what degree of intoxication has upon voluntariness and admissibility of statements.

The outlook of the North Carolina Supreme Court upon a confession, given under the circumstances indicated *supra*, is almost diametrically opposed to that of the District Court for the Middle District of North Carolina and the Court of Appeals for the Fourth Circuit. Taking the two high state court decisions together (See Appendix A and B) it is clear that the court adheres to the general rule on the subject as it is summarized and stated at 69 A.L. R. 2d 364:

> "The Courts are agreed that proof that one who has confessed to crime was intoxicated at the time of making

> a confession goes to the weight and credibility to be accorded to the confession, but does not require (at least where the intoxication does not amount to mania, and the intoxicants were not furnished the accused by the police or other government officials) that the confession be excluded from evidence."

Instead of automatically ruling that the confession was involuntary because Logner was intoxicated at the time he gave the admissions, the North Carolina Supreme Court sought to properly apply the law on the point as accepted prior to the *MIRANDA v. ARIZONA* decision. That is, all the attendent circumstances surrounding the confession were viewed to see if the elusive due process of law standard had been violated. 12 L. Ed. 2d 1340, 1342. The court's examination revealed that Logner, not at all inexperienced with the police, was properly advised of his rights to remain silent, to retain counsel and that his remarks might be used against him; that a full hearing was afforded him on the question of voluntariness in the absence of the jury; that no coercion of any kind was applied to secure the admissions, but on the contrary, that Logner sought to confess his guilt even upon the repeated warnings as to his rights by the police; that the confessions subsequently proved to be reliable and truthful. Regarding due process as somewhat akin to "fair play" the court essentially decided that there was nothing shocking to the conscience or fundamentally unfair about the judicial procedure employed in this case. The relevancy and weight of the defendant's statements was properly left with the jury. *STATE v. ISOM*, 243 N. C. 164 (1955).

The State of North Carolina respectfully maintains that the North Carolina Supreme Court correctly applied the federal test for determining voluntariness at that time, and that said test was not only constitutionally sound but practical and reasonable in that police as guardians of the public peace were not required to close their ears to incriminating statements made by criminals fully in touch with reality.

2. In *PEOPLE v. SCHOMPERT*, 19 N. Y. 2d 300, 279 N. Y. S. 2d 515 (1967), the defendant, diagnosed as a psychotic and an alcoholic, called the police to a public bar and there confessed to burglary. The police officers testified that Schompert was intoxicated to the verge of delirium tremens, and, in fact, entered that state shortly after relating the details of his crime. The Court of Appeals of New York, six justices adhereing to the majority opinion and the Chief Justice concurring, and without any dissents, held the confession to be voluntary. The Court pointed out that the record established that the defendant was "sufficiently 'in touch with the realities of his situation' when he made his confession so that one was entitled to accept it as reliable despite defendant's evident advanced intoxication." The Court specifically rejected the policy argument that alcoholic intoxication alone should preclude the use of a confession. It was carefully pointed out that where trustworthiness was the concern in determining the voluntariness of the confession (where such factors as coercion and unfairness are not involved) the test becomes one of reliability which may be met by looking to subsequent events and other factors. For examples, the New York Court said that accuracy might be established by subsequent events while incapacity to confess might be shown where a confessant was so drunk that he was unable to appreciate the nature and consequences of his statements.

It would appear that Schompert was under the influence of alcohol to a greater degree than was Logner, yet the distinguished New York court found the confession to be voluntary. Schompert, it was determined, knew what he was saying as was established by the subsequent verification of his statements. But Logner's confession also proved to be reliable, and, although he was mistaken in his belief that all elements of his confession had to be proven, nevertheless, he freely chose to incriminate himself. It is submitted that the two cases are factually indistinguishable, and that this clear conflict in legal results should be resolved.

(3) In the often cited case of *MCAFEE v. UNITED STATES*, 72 App. D. C. 60, 111 F. 2d 199, cert. denied 310 U. S. 643, 60 S. Ct. 1094 (1940), the Court of Appeals of the District of Columbia decided that defendant's claim (one among several) that his being drunk rendered his confession to homicide involuntary was without merit. The court declared that the controlling law in the District of Columbia on this issue was derived from *BELL v. UNITED STATES*, which stated:

> ". . . that the drunken condition of an accused when making a confession, unless such drunkenness goes to the extent of mania, does not affect the admissibility in evidence of such confession, but may affect its weight and credibility with the jury." 60 App. D. C. 76, 47 F. 2d 438, 74 A. L. R. 1098.

The law on the voluntariness of a confession in the District of Columbia Court of Appeals appears to conflict with the position on that legal question taken by the Court of Appeals for the Fourth Circuit. The need for uniformity in the application of the federal law magnified by an even greater necessity for uniformity when the federal standard and the state standard are the same, require that clarification on this particular legal point be given by the Supreme Court of the United States.

(4) The United States Court of Appeals for the Fourth Circuit's decision in *LOGNER v. STATE OF NORTH CAROLINA* also differs with other authority including the Supreme Court of the State of California. In *PEOPLE v. BYRD*, 42 Cal. 2d 200, 266 P. 2d 505 (1954), the defendant was charged and convicted of first degree murder. Many issues were raised on appeal and addressed by the state's highest court. One of these related to taped conversations between the defendant and the district attorney, in which the defendant made certain confessions. Byrd argued that the statements were involuntary because he was under the influence of alcohol at the time he

uttered them. The court rejected this contention and relied in turn on the rule in *PEOPLE v. DORMAN*, which said succinctly:

> "Even if such a condition did exist, it did not make the confessions inadmissible. This court has declared that intoxication at the time of making confessions does 'not deprive the confessions of the required spontaneity to make them free and voluntary.' " 28 Cal. 2d 846, 854, 172 P. 2d 686, 691 (1946)

The Supreme Court of the United States greatly modified the required procedure for warning individuals of their constitutional rights upon arrest in the landmark case of *MIRANDA v. ARIZONA*, 384 U. S. 486, 86 Sup. Ct. 1602, 16 L. E. 2d 694 (1966). While that decision does not apply to *LOGNER v. STATE OF NORTH CAROLINA*, it is noteworthy that perhaps even under the more stringent test of Miranda the decisions of the Supreme Court of North Carolina should not have been disturbed. The Court in *MIRANDA* emphasized that not all confessions are inadmissible. Any statement given freely and voluntarily "without any compelling influences" is admissible; and, further, any kind of statements volunteered to the police are not barred by the Fifth Amendment: It is respectfully maintained that Logner's confessions would be admissible under Miranda as they were volunteered and in no way obtained by coercion.

Legal scholars, particularly in the field of evidence, have also looked at confessions given while intoxicated in a manner contrary to the Fourth Circuit Court of Appeals opinion in Logner. Wigmore, for example, is concerned about the confessant's testimonial capacity and would use subsequent facts to confirm whether or not to admit the confession. 3 Wigmore, Evidence [3d. ed.] § 856 at 338. *See* also sections 841, 822, and 2 Wharton, Criminal Evidence [12th ed] § 388 at *p. 122*. To

the same effect see 79 *HARV. L. REV.* 935, 968-969 (1965-1966).

Therefore, it is respectfully submitted that this Court should exercise its jurisdiction in granting the writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit in this case in order that the conflicts between the decision of the Fourth Circuit Court of Appeals and the decisions of the North Carolina Supreme Court, the Court of Appeals of New York, the Supreme Court of California, and the United States Court of Appeals for the District of Columbia may be resolved on the question presented herein.

REASONS FOR GRANTING THE WRIT

On Issue of Effect of Amended Habeas Corpus Statute.

The District Court was without power to grant the Writ of Habeas Corpus as the defendant did not bring his case within any of the provisions of Section 2254, Title 28 United States Code, as amended effective November 2, 1966 (27 days before the District Court's decision).

It appears that the order entered by the Court was entered not pursuant to the section of the code as amended, but rather pursuant to the language of that section as it existed before amendment.

It seems clear that the jurisdiction of the District Court in this matter is defined and limited by the terms of the Statutes particularly Section 2254 of the United States Code. As Chief Justice Stone said in *LOCKERTY v. PHILLIPS*, 319 U. S. 182 (1943); "All Federal Courts, other than the Supreme Court, derived their jurisdiction wholly from the exercise of the authority to 'ordain and establish' inferior courts, conferred on Congress by Article III Sec. 1, of the Constitution. The Congressional power to ordain and establish inferior courts includes the power of investing them with jurisdiction from them in the

exact degree and character which to Congress may seem proper for the public good.'"

The fact that the statute was amended after the Petition was filed in this Court and after the Habeas Corpus hearing, but before the order was entered, does not alter the controlling effect of the provisions of the statute as amended. This point has been established by a number of decisions by the United States Supreme Court and several Circuit Courts. EX PARTE MCCARDLE 73 U. S. 318 (1868), 74 U. S. 506 (1869). In *BRUNER v. UNITED STATES*, 343 U. S. 112 (1952) the plaintiff sued the United States in the District Court on the theory that he was due overtime compensation. The action was brought in 1948. At that time, the revelant statute gave jurisdiction to the District Court limited to persons other than "officers of the United States". After certiorari had been granted by the Supreme Court, the Statute was amended to limit the jurisdiction of the District Court so that it did not have jurisdiction of actions brought under such circumstances by "officers or employees of the United States." The Supreme Court held that the statute as amended was controlling as to the Jurisdiction of the District Court. To like effect see EX PARTE COLLETT, 337 U. S. 55, *HAMM v. ROCK HILL*, 379 U. S. 306, *ORR v. UNITED STATES*, 174 F-2nd, 577 (second circuit 1949), *BOWLES v. STRICKLAND*, 151 F-2nd 419 (fifth circuit 1945), *HODLEY v. SAN FRANCISCO*, 194 U. S. 4.

Therefore it appears evident that the District Court erred in assuming the power of issuing a Writ of Habeas Corpus after the Federal Habeas Corpus Statute had been amended, and the United States Fourth Circuit Court of Appeals was likewise in error in affirming the issuance of such Writ. And it is respectfully submitted that this Court should exercise its jurisdiction in granting the Writ of Certiorari to review the decision of the United States Fourth Circuit Court of Appeals in this

case so that the correct meaning and effect of Section 2254, Title 28 United States Code (as amended) may be determined and known.

Respectfully submitted,

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Appendix A

IN THE SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA v. LOUIS ANTHONY LOGNER.

(Filed 14 January, 1966.)

1. Criminal Law § 71—

Intoxication does not render a confession inadmissible unless at the time defendant is so drunk as to be unconscious of the meaning of his words, and intoxication to a degree less than mania relates to the credibility of the statement, and the trial court correctly so instructs the jury.

2. Same—

The competency of an extra-judicial confession is a preliminary question to be determined by the trial court upon the *voir dire*.

3. Same—

Where the trial court finds upon the *voir dire* from conflicting evidence that the confession in question was freely and voluntarily made after defendant had been advised of his right not to speak and his right to have counsel, and that defendant was at that time not so intoxicated as to amount to mania, the findings, being supported by evidence, are conclusive on appeal.

APPEAL by defendant from *Bickett, J.*, July 28, 1965 Special Criminal Session of DURHAM.

Criminal prosecution upon a bill of indictment which charges defendant with safecracking and safe robbery growing out of the facts hereinafter detailed. On the night of November 16-17, 1964, thieves broke into the office of McCracken Oil Company in Oxford, North Carolina. They removed the door from the walk-in vault, dissevered the hardened steel money chest from the concrete in which it was encased, and carried it away. The chest contained about $1,300.00 in cash and $8,700.00 in checks. In consequence of information given them by defendant, law enforcement officers located the rifled safe in a rural area of Orange County and charged defendant with a violation

of G.S. 14-89.1. Upon the trial, when the State offered in evidence the statements which defendant had allegedly made to the officers, defendant objected for that at the time the detectives talked to him (1) he was not warned of his constitutional rights to remain silent and to be represented by counsel; and (2) he was so intoxicated that all his statements were involuntary.

In the absence of the jury, the judge heard evidence offered by both the State and defendant bearing upon the nature of the confession. The evidence for the State tended to show these facts:

About 11:30 a.m. on November 18, 1964, Detectives Hartley and Morris of the police force of the City of Durham observed defendant, who "wasn't walking like a sober man." When he got into his car the officers followed him, "trying to get him before he had a wreck." Defendant, however, collided with two cars when the detectives were practically behind him. At that time, they had no notion that he was connected with the Oxford safe robbery although (they said) he would have been a "natural" suspect in "any safe job." They arrested defendant for drunken driving. Detective Morris testified:

> "Louis (defendant) said something pertaining about he would pay the other people's damages and that I knew where the money came from, and I knew where he got the money. He said 'I will pay the damage, I have got the money, you know where the money came from,' and I told him right then, I said 'Louis, now, I want to warn you that anything you tell me, that can be used against you in a court of law. You have got a right to an attorney, you don't have to tell me anything.' "

At police headquarters defendant kept talking about paying the damage. He was again warned of his right to remain silent and to have counsel. His reply was, "I can tell you anything

I want to, you have to prove it." The officers then talked to defendant briefly about "where he got the money." He went into detail about "Mr. George Johnson's safe on Indian Trail in Durham" and offered to show the officers where it was. They had heard nothing of the Johnson safe job which had been reported to the County Sheriff, and, although they had read about the Oxford robbery in the newspaper, they were not particularly interested in the McCracken Oil Company safe because Oxford was not in their jurisdiction. Defendant, however, volunteered the information that he had something to do with the McCracken safe job; that he went over there in his car with Claiborne McKee and Benjamin Edward Ranson; that, while Ranson watched from across the street with a shotgun, they cut a hole in the fence with a pair of bolt cutters, went in the building, and "busted open the vault—ripped it from the top down—and went in and got the nigger-head safe out and brought it back to Durham." According to the officers, although defendant was under the influence of intoxicants, he knew what he was saying, and they listened while he did most of the talking.

Between 2:30 and 3:00 p.m., the detectives again talked to defendant for about thirty minutes. He had been given no liquor in the meantime. "He didn't need any liquor to loosen him up. He was already gone." That afternoon defendant and the officers went to Orange County looking for the Oxford safe. After a brief and fruitless search in the vicinity of Murphy School, defendant said, "Let's go back to town." On the way back, defendant brought up the Johnson safe again and said "I will show you where that is." He then directed them to a bank in the woods where, about 4:00 p.m., they found a safe "which turned out to be the Johnson safe."

About 7:30 that night, defendant was questioned by Morris, S. B. I. Agent Harton, and Chief of Police White of Oxford. According to their testimony, defendant obviously had been drinking intoxicants, but he was not then drunk. At the be-

ginning of this interrogation, Harton identified himself and introduced Chief White to defendant. He said,

> "I told him that he didn't have to talk with us, that anything he said could be used against him, that he was entitled to a lawyer if he wanted one and we would be glad to call him one if he wanted us to. He said he didn't need a lawyer."

Harton, who had not talked with defendant previously, asked him to go back over the story of the "deal in Oxford." He spoke freely and voluntarily. While giving his statement he asked for a drink, but it was refused.

> "He (defendant) said he was there Monday night at the McCracken Oil Co., getting the safe . . . (H)e and two more men were there. They went in on his car which was a 1958 DeSoto and parked on a dirt street near the McCracken Oil Co. . . . He said they cut the fence on the outskirts of the place near a used car lot with a pair of bolt cutters. He said a fellow by the name of Claiborne McKee and an escaped convict by the name of Ranson were there. They had a long prize bar with a fork on one end and hook on the other, a sledge hammer and a chisel and bolt cutters. He said that he and McKee were on the inside and that Ranson was across the street at a lumber company with a shotgun. . . . He was very cooperative. He said there was approximately $1,800 in it, in cash, that the checks were burned up and that he got approxmately $390 for his share."

Defendant's criminal record was well known to Harton, who regarded him as a professional safecracker. At no time did the officers themselves, or any other person to their knowledge, give defendant any intoxicants, or offer him any other inducement to talk. Defendant never asked to call his mother or any other person.

The next morning (November 19th) defendant was interviewed by the same officers and a deputy sheriff from Goldsboro about a safe robbery there. He was again told that he had a right to remain silent and that he could have an attorney if he wanted one. Later in the day defendant and the officers went once more to the vicinty of the Murphy School where, after some searching, defendant finally pointed out a high bank on top of which they found the Oxford safe. Defendant then stated that after the safe was removed from the office in Oxford, he and his confederates brought it back to his house in Durham, where it remained until about 12:30 or 1:00 the next day. He then took it to a garage in Durham, and the owner cut it open with a torch. After rifling the safe, he dumped it in Orange County. He declined to give the officers the address of the garage or the name of the operator. He said the officers would be surprised if they knew.

Defendant's evidence on the *voir dire* tended to show: He began drinking early on the morning of November 18, 1964, as well as taking "green hornet" (amphetamine) pills. He had been on a binge for four or five weeks. He started drinking in the first grade and has had a drinking problem all of his adult life—drinking anything from shaving lotion and canned heat to shellac. When the officers arrested him for drunken driving, he was so drunk and "pilled up" he could not get out of his car. Immediately after he was taken to the police station, the officers gave him four two-ounce cups of whiskey which he drank "as fast as possible." Thereafter, his mind was a complete blank; he remembers nothing until the morning of the 19th, when he was told he had made a statement. He then told the officers, including the one from Goldsboro, that he would plead guilty to anything if they would let him lie down. Instead, they continued to question him. He was so sick he was unable to eat that day. He told Morris that he was drinking and riding around with "some Georgia boys" when they dumped out a safe from the trunk of the car in Orange County.

He had met these "Georgia boys" several months before but he did not know their names. To the best of his memory, defendant never told anybody he was involved in the McCracken Oil Company safe robbery. The "Georgia boys" had picked him up about 8:00 a.m. On the night of November 16-17, he had been at Am. Vet's Post No. 1 until about 2:00 a.m., when he drove himself home. On the morning of the 17th, he went to his mother's home at 8:30, then down town. That afternoon, he got drunk and went home where he stayed until evening, when he went to the Morgan Street Am. Vet's Club where he stayed until he took two girls (whose names he did not know) shopping and spent $30.00 on clothes for them. He returned to the Club and eventually went home drunk. About 6:30 a.m. on the 18th, he went to Young's place where he stayed until noon. He left there drunk and was arrested by Detective Morris for drunken driving shortly thereafter.

Defendant's cell mate at the City jail testified that defendant was drunk on the 18th when he was brought in, and that on the 19th defendant brought in two pints of liquor in a candy box. The two of them drank the liquor "right quick." Defendant's mother and his former wife corroborated defendant's testimony that he was drunk on November 17th and 18th.

Upon the foregoing evidence the judge made detailed and specific findings of fact. *Inter alia*, he found that at the time of his arrest and thereafter, defendant was informed that he had a right to remain silent and to make no statement to the officers; that he had a right to counsel; that defendant, although under the influence of intoxicating liquor, was aware of his constitutional right to have counsel and to remain absolutely silent. The judge further found that defendant was not furnished any intoxicants by any police officers or by anyone else who could be identified in court; that when defendant was advised of his right to counsel, he replied that he did not need one; that defendant's intoxication did not amount to

mania and that he was aware of the statements which he made to the officers. The court concluded

> ". . . that none of the Constitutional rights pled by the defendant were or have been violated and that his admission and confessions to officers Detective R. G. Morris and L. M. Harton were given freely, voluntarily, without reward or hope of reward, or any other inducement and that said statement should be admitted into evidence to be given weight by the jury to which the jury finds they are entitled."

The evidence which the judge heard on the preliminary examination to determine the admissibility of the defendant's purported admissions was repeated in more detail before the jury. In addition, both the State and defendant offered the testimony which, for the State, tended to corroborate defendant's statements to the officers and which, for defendant, mainly tended to corroborate his evidence of extreme intoxication.

The jury returned a verdict of guilty as charged in the bill of indictment. From a sentence of imprisonment, defendant appeals, assigning errors, all of which, in effect, relate to the competency of his alleged confession.

Attorney General T. W. Bruton and Andrew A. Vanore, Jr., Staff Attorney, for the State.

Nicholas Galifianakis for defendant appellant.

SHARP, J. Defendant contends (1) that his intoxication on November 18th and 19th rendered any statements he may have made to the officers involuntary; and (2) that, if the officers advised him of his constitutional rights, his intoxicated condition made such advice entirely ineffectual.

This Court has considered a defendant's plea of drunkenness

as a bar to the admissibility of his confession in the following cases: *State v. Painter*, 265 N.C. 277, 144 S.E. 2d 6; *State v. Stephens*, 262 N.C. 45, 136 S.E. 2d 209; *State v. Isom*, 243 N.C. 164, 90 S.E. 2d 237, 69 A.L.R. 2d 358. From them this rule emerges: Unless a defendant's intoxication amounts to mania—that is, unless he is so drunk as to be unconscious of the meaning of his words—his intoxication does not render inadmissible his confession of facts tending to incriminate him. The extent of his intoxication when the confession was made, however, is a relevant circumstance bearing upon its credibility, a question exclusively for the jury's determination.

In his charge, the judge made it crystal clear to the jurors that they were sole judges of the credibility of all witnesses who had testified and that, if they were satisfied beyond a reasonable doubt that defendant had made the challenged statements to the officers, they should consider the condition of the defendant at the time he made the statements. This was a substantial compliance with the requirement laid down in *State v. Isom, supra.*

It is settled law in this jurisdiction that the competency of an extra-judicial confession of guilt is a preliminary question to be determined by the trial judge in the manner set out in *State v. Whitener*, 191 N.C. 659, 132 S.E. 603 and *State v. Rogers*, 233 N.C. 390, 64 S.E. 2d 572. A finding that the confession was voluntarily made will not be disturbed on appeal "unless accompanied by some imputed error of law or legal inference." *State v. Grass*, 223 N.C. 31, 25 S.E. 2d 193. Ordinarily the rule is stated to be that if the court's finding is supported by any competent evidence it will be sustained, *State v. Outing*, 255 N.C. 468, 121 S.E. 2d 847; if not, it will be set aside. *State v. Chamberlain*, 263 N.C. 406, 139 S.E. 2d 620. Much of the evidence which the trial judge heard was conflicting, but "where the evidence is merely in conflict on the question as to whether or not a confession was voluntary, the ruling of the court is conclusive on appeal." *State v. Ham-*

mond, 229 N.C. 108, 47 S.E. 2d 704. The evidence fully supports Judge Bickett's findings. Defendant had and was accorded the right to a preliminary hearing on the competency of his alleged confession. The judge, however, was not required either to believe or to accept his testimony as if it were true.

Upon the argument, defendant's counsel complained that the trial judge "wanted to relate defendant's confession to the truth" instead of to the question whether he had exercised an "enlightened choice" in making it. In defendant's brief, he says:

> "The reason for excluding involuntary confessions is not because they might be unreliable, but rather that admission of such confession violates one's constutional rights. So the issue really boils down to the simple question which right is to take priority under the law, the right of society to be free from crime or the individual rights of the accused?"

We indulge the hope that these two rights are not on a collision course. In any event, we do not have to fix a priority in this case. The law of this State does not require its enforcement officers to turn a deaf ear to a liquor head who wants to talk lest he give them some information which would solve a crime, or lest his tongue, loosened by alcohol, utter an incriminating statement he might later regret. Defendant here is not an inexperienced juvenile delinquent. He testified that he had "been before the court in a large number of cases" and knew "a thousand or more (of) prisoners in the penal system by face." The officers were not required to give him a head start as if they were playing the childish game of cops and robbers. On the contrary, having advised him of all his constitutional rights, it was their duty to pursue his lead and to obtain from him any information he would voluntarily give.

Here, as in *State v. Outing, supra*, the trial judge "with pa-

tience, care and discrimination, conducted the preliminary inquiry, saw and heard the witnesses (and) thereupon found the defendant's statements were voluntary. Substantial evidence supports the finding. It is binding on appeal." *Id.* at 473, 121 S.E. 2d at 850.

All of defendant's assignments of error are overruled. In the trial we find

No error.

Appendix B

IN THE SUPREME COURT OF NORTH CAROLINA

STATE v. LOUIS ANTHONY LOGNER, DEFENDANT.

(Filed 1 March, 1967.)

1. Criminal Law § 71—

The intoxication of a defendant at the time of making incriminating statements does not render the statements incompetent when the trial court finds, upon supporting evidence, that at the time defendant was not intoxicated to such an extent as to render his statements involuntary.

2. Criminal Law § 107—

Ordinarily, the trial court is required to instruct the jury as to all essential elements of the offense charged and place the burden upon the State to prove each of such elements, and whether a deficiency in this respect is sufficient ground for a new trial must be determined in relation to the circumstances of each case.

3. Same—

The court's instructions to the jury made the question of guilt dependent upon whether defendant made incriminating statements attributed to him and whether he made such statements freely and voluntarily, but no where did the court charge the elements of the offenses or that the burden was on the State to satisfy the jury from the evidence beyond a reasonable doubt that defendant committed the acts constituting the offenses charged. *Held:* The failure of the court to define the offenses and properly place the burden of proof is prejudicial error.

4. Criminal Law § 71—

It is error for the trial court to charge the jury that the court had found that the incriminating statements attributed to defendant were freely and voluntarily made.

APPEAL by defendant from *Burgwyn, E. J.*, April 18, 1966, Regular Criminal Session of DURHAM, docketed and argued as No. 747 at Fall Term 1966.

Criminal prosecution on a two-count bill of indictment charging defendant (1) with feloniously breaking and enter-

ing a building (dwelling) occupied by one George G. Johnson, and (2) with the larceny of personal property of said George G. Johnson, to wit, a safe and contents, of the value of $250.00.

Evidence was offered by the State and by defendant.

The State offered the testimony of George G. Johnson tending to show that someone had cut the window screen and, through the window had entered his dwelling at 2412 Indian Trail, Durham, N. C., and had taken and carried away from said dwelling, his "small iron safe, about 2½ feet high, and about twenty-one (21) inches deep," the value of the safe and its contents being "around Two Hundred and some dollars"; and that, shortly after his return on Monday, November 9, 1964, from a week-end trip, he discovered his dwelling had been broken into and entered and the safe stolen.

Defendant was placed under arrest about 11:30 a.m. on November 18, 1964, by Detectives R. G. Morris and J. S. Hatley of the Durham Police Department, for operating a car while under the influence of intoxicating liquor.

The State proffered the testimony of Morris and Hatley as to incriminating statements of defendant after his arrest and while in their custody. Upon objection by defendant, the court conducted a hearing in the absence of the jury to determine the admissibility of the proffered testimony. The evidence at such hearing consisted of testimony as to the manner and extent defendant was advised as to his constitutional rights and as to the extent of defendant's intoxication at the time he was so advised and at the time he made the incriminating statements attributed to him. At the conclusion of such hearing, the presiding judge, in the absence of the jury, made findings of fact to the effect defendant had been properly advised as to his constitutional rights and that defendant was not intoxicated to such extent as to render his incriminating statements involuntary.

Defendant's objections having been overruled, Morris and Hatley testified as to statements made by defendant with reference to the Johnson and other "safe jobs." According to their testimony: Defendant stated he had broken into and entered the Johnson dwelling; that he had taken and carried away the safe and its contents; and that, with the assistance of one or more persons, he had "carried the safe to a wooded area off 70 East and busted it open." They testified that defendant, about 2:30 or 3:00 p.m. on November 18th, accompanied and directed them to the place where the abandoned safe was found.

Evidence offered by defendant tended to show that, at the time of his arrest and thereafter on November 18th, he was intoxicated to such extent he was not aware of being advised by the detectives as to his constitutional rights; that he did not consciously and voluntarily make any statement with reference to the Johnson case; that he did not know where Johnson lived and had not seen the safe referred to as the Johnson safe until it was exhibited at a former trial; and that if he made any of the incriminating statements attributed to him by said detectives, such statements were not in fact true.

The jury returned a verdict of "guilty as charged," and the court pronounced judgment imposing a prison sentence of not less than five nor more than seven years. Defendant excepted to said judgment and appealed.

Attorney General Bruton and Staff Attorney Vanore for the State. Wade H. Penny, Jr., for defendant appellant.

Bobbitt, J. Defendant assigns as error the admission, over his objections, of the officers' testimony as to incriminating statements made by defendant.

According to the State's evidence, defendant, after his arrest on November 18, 1964, and while in the custody of

Detectives Morris and Hatley, made incriminating statements relating both to the safe of McCracken Oil Company of Oxford, N. C., and to the safe of George Johnson. Defendant was tried at July 28, 1965 Special Criminal Session of Durham upon an indictment charging safecracking and safe robbery in connection with the McCracken Oil Company safe. He was found guilty as charged and Judge Bickett, who presided at the trial, pronounced judgment imposing a prison sentence. Upon defendant's appeal, this Court found "no error." *S. v. Logner*, 266 N.C. 238, 145 S.E. 2d 867.

The record on appeal in said prior prosecution, as appears from the preliminary statement and opinion of Sharp, J., shows that, in said trial before Judge Bickett, the testimony of Morris and Hatley was substantially the same as their testimony in the present case as to the conditions and circumstances under which defendant made the statements attributed to him; that defendant objected to their testimony on substantially the same grounds asserted herein; and that Judge Bickett, based on findings of fact made by him, overruled defendant's objections and admitted the testimony in evidence. This Court held the evidence presented at the *voir dire* hearing was sufficient to support Judge Bickett's findings and rulings. It has come to our attention that, in a *habeas corpus* proceeding in the United States District Court for the Middle District of North Carolina, District Judge Gordon, after conducting a plenary hearing, reached the opposite conclusion and ordered the discharge of defendant unless the State retried him within six months. *Logner v. State of North Carolina*, 260 F. Supp. 970. While we regret this conflict, we adhere to the views expressed by Sharp, J., in *S. v. Logner, supra*, and for the reasons there stated we approve Judge Burgwyn's findings and rulings.

However, for reasons stated below, we are constrained to hold defendant is entitled to a new trial.

Defendant contends, based on sufficient exceptions and assignments of error, that the court did not declare and explain the law as to the elements of the criminal offenses charged in the bill of indictment. The judge instructed the jury in substance as follows: After reading the material portions of each count in the bill of indictment, proper instructions were given as to the presumption of innocence and as to the State's burden to establish guilt beyond a reasonable doubt. The court gave instructions as to the applicable law in determining the weight, if any, to be given the testimony relating to statements attributed to defendant. The court then reviewed the conflicting contentions as to whether defendant made the statements attributed to him by Morris and Hatley and as to the weight to be given the testimony relating to defendant's intoxication. According to the record, the court failed to define or otherwise explain the essential elements of the crimes charged in the bill of indictment or to state the facts the State was required to establish beyond a reasonable doubt to warrant verdicts of guilty.

The State must prove beyond a reasonable doubt every essential element of the crime charged, and it is incumbent upon the trial judge to so instruct the jury. *S. v. Cooper*, 256 N.C. 372, 124 S.E. 2d 91, and cases cited. An instruction as to the essential elements of the crime is a necessary part of such charge. Whether a deficiency in this respect is sufficient ground for a new trial must be determined in relation to the circumstances of each case. *S. v. Fulford*, 124 N.C. 798, 32 S.E. 377. In the present case, we are of the opinion, and so hold, that the failure of the court to give instructions as to the essential elements of the crimes charged and as to the facts the State was required to establish beyond a reasonable doubt to warrant verdicts of guilty constitutes prejudicial error.

The court's final instruction, to which defendant excepted, sufficiently indicates the error. The court's final instruction was as follows:

"If you are satisfieid beyond a reasonable doubt that he made those statements as testified to by the officer, and that he did so freely and voluntarily, and that his mind was clear enough at least for him to know what he was talking about, you would find him guilty as charged in the bill on both counts. If you have a reasonable doubt about his having made any statements as testified to by the officers, you would find him not guilty or if you are satisfied beyond a reasonable doubt that he made the statements, and however, are not satisfied beyond a reasonable doubt that he knew and had enough mental acumen left in his mind to speak the truth about the matter and to know what he was talking about, you would find him not guilty."

In the quoted instruction, guilt is made to depend upon whether defendant made the statements attributed to him by Morris and Hatley and, if so, whether he made them (1) freely and voluntarily and (2) with knowledge of their truth or falsity, rather than upon whether defendant committed the crimes charged in the bill of indictment. We find no instruction charging in substance that, before the jury could return a verdict of guilty on the first count, the State must satisfy the jury from the evidence beyond a reasonable doubt that defendant broke into and entered the dwelling of George Johnson in early November 1964 with intent to commit the felony of larceny therein, or that, before the jury could return a verdict of guilty on the second count, the State must satisfy the jury beyond a reasonable doubt that defendant unlawfully took and carried away George Johnson's safe from said dwelling with the felonious intent of appropriating it to his own use and of depriving its true owner permanently of the use thereof.

While a new trial is awarded on the grounds stated above, it appears that the judge included in his instructions to the jury a statement that "the court has ruled that the confession or statement, if one was made by the defendant as testified to

by the officers, was freely and voluntarily made on his part without compulsion or duress and without reward or hope of reward." Defendant's exception and assignment of error with reference to this excerpt from the charge are not brought forward in his brief. However, it seems appropriate to call attention to certain recent decisions of this Court. "If the judge determines the proffered testimony is admissible, the jury is recalled, the objection to the admission of the testimony is overruled, and the testimony is received in evidence for consideration by the jury." *S. v. Walker*, 266 N.C. 269, 145 S.E. 2d 833. It is error for the judge to instruct the jury that he has ruled or determined that the statements, if any, attributed to defendant, were made by defendant freely and voluntarily. *S. v. Barber*, 268 N.C. 509, 151 S.E. 2d 51.

For prejudicial error in the charge, defendant is awarded a new trial.

New trial.

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

LOUIS ANTHONY LOGNER, Petitioner	)	
v.	)	NO.C-130-G-66
STATE OF NORTH CAROLINA, Respondent	)	

Norman E. Williams and Richard M. Hutson, II, of Durham, North Carolina, for the Petitioner

Thomas Wade Bruton, Attorney General of North Carolina, and Theodore C. Brown, Jr., Staff Attorney, North Carolina Department of Justice, Raleigh, North Carolina, for the Respondent

MEMORANDUM OPINION

GORDON, District Judge

The petitioner, Louis Anthony Logner, a prisoner of the State of North Carolina, hereinafter referred to as petitioner, has filed with this Court a petition for a writ of habeas corpus pursuant to the provisions of Title 28 U.S.C. § 2241 and § 2254. The petitioner contends that:

1. The admission of incriminating statements obtained

while he was illegally detained without the benefit of counsel and while he was in an extreme state of intoxication due to over-indulgence in alcohol and narcotics was a violation of the due process requirements of the Constitution of the United States.

2. His state of intoxication at the time of the alleged incriminating statements was such as to deprive him of any meaningful capacity to make a free and intentional choice to incriminate himself.

3. The state court's application of the standard of voluntariness, which primarily considered the reliability of the confession as the test for its voluntariness and not the "totality of circumstances," denied him the correct constitutional standard of voluntariness required by due process under the Fourteenth Amendment.

The petitioner was tried for the offense of safecracking and safe robbery at the July, 1965, Special Criminal Term of the Superior Court, Durham, North Carolina. The petitioner was found guilty on his plea of not guilty and sentenced to not less than ten nor more than fifteen years in prison.

On the night of November 16, 1964, thieves broke into the office of the McCracken Oil Company in Oxford, North Carolina. They removed the safe containing over $10,000.00 in cash and checks from its concrete foundation and carried it away. At the petitioner's trial in connection with this offense the state offered into evidence certain alleged statements petitioner made on November 18, 1964. The petitioner objected to the use of these statements. He contended that he was so intoxicated at the time that all such statements were involuntary, and that any waiver of his constitutional rights had been ineffectual. The trial judge, in the absence of the jury, heard evidence and made specific findings of fact as to the confessions and determined that all were voluntary under the

applicable standards. After the judge had determined that the statements were admissible, the evidence which had been heard to determine their admissibility was repeated in more detail before the jury.

After the finding of guilty, the petitioner appealed to the Supreme Court of North Carolina, objecting to the use of these statements. In the decision, *State v. Logner*, 266 N. C. 238, 145 S. E. 2d 867 (1966), the Supreme Court held that the evidence supported the trial judge's findings that the defendant's statements to the police were voluntary and that the defendant had been advised of his constitutional rights to remain silent and to be represented by counsel.

After certiorari to the Supreme Court of the United States was denied in *Louis A. Logner v. North Carolina*, —— U. S. ——, 16 L. Ed. 2d 1032, —— S. Ct. —— (1966), the petitioner filed a petition for a writ of habeas corpus in this Court on July 12, 1966.

Even though a full factual hearing had been given in the trial court on the contentions of the petitioner now before us, a plenary hearing was granted and was held in Durham, North Carolina, on October 20, 1966. From the testimony at the hearing and from consideration of the transcript from the original trial in the Superior Court of Durham, North Carolina, the following facts were developed.

Petitioner at the time was forty-three years of age. He had recently been released from prison in June of 1964. He has had a serious drinking problem since childhood. Petitioner started drinking at the age of six or seven and will drink anything with any alcoholic content; it makes no difference. In addition, he takes stimulants of all kinds in large quantities. He has a number of arrests for public drunkenness and the records of Duke Hospital reflect treatment for alcoholism in 1954.

On the date in question, November 18, 1964, the petitioner had been drinking and taking stimulants over an extended period of time. That particular morning, in addition to consuming liquor, petitioner had been taking Syndrox, an amphetamine, in large quantities. At about 11:30 A. M. on November 18, 1964, Detectives Hartley and Morris of the Police Department of the City of Durham, observed the petitioner in downtown Durham and noted that "he wasn't walking like a sober man." The officers thought the petitioner was drunk, but not drunk enough to warrant being arrested for public drunkenness. However, when he drove away in his car, they followed him fearing an accident might result. Their apprehension was justified, because the petitioner had gone only two or three blocks before he was involved in a traffic accident. After failing to negotiate a left turn properly, he hit two cars in the line of approaching traffic. The police officers were immediately behind the petitioner and observed the wreck take place. The driver of one of the cars in the accident testified that the petitioner was obviously drunk and was even unable to put his car in reverse to back away from the cars with which he had just collided. Also, that he had to be assisted from his car by the police officers when he was taken to their car.

Detectives Morris and Hartley called for a patrolman to investigate the accident and took the petitioner into custody for driving under the influence. Patrolman Watson, who investigated the accident, noted in his report, "The driver of Vehicle # 1 (petitioner) was drunk and was unable to give a statement as to what happen (sic)."

Once in the police car, the petitioner stated to the effect that he could pay for the damage to the other cars and that they (meaning the police officers) knew where the money came from. At this time, the petitioner was in custody for drunken driving only, and was not in custody for safe robbery, although the police officers admitted the petitioner would have

to be a natural suspect in any safe job. After this initial statement by the petitioner, the officers stated that the petitioner was warned of his rights to remain silent and to have counsel.

When the petitioner arrived at the police station, he was not placed in jail after the initial processing, but was taken to an interrogation room. One of the police officers stated that the purpose in taking the petitioner to the interrogation room was to amplify the statements the petitioner had made earlier in the patrol car. Both officers testified the petitioner was under the influence of intoxicants at this time. Further warnings as to his constitutional rights were repeated and to this the petitioner replied, "I can tell you anything I want to. You still have to prove it." After some questioning the petitioner made a statement implicating himself in the McCracken Oil Company robbery and a local safe robbery at the residence of one Johnson on Indian Trail Road in Durham. This initial interrogation lasted approximately thirty minutes, from 12:00 to around 12:30 P. M.

About 2:30 P. M. the same date, the prisoner was interrogated again by the same two police officers. In response to an accusation that the petitioner was given liquor by the police, one police officer testified, "He didn't need any liquor to loosen him up, he was already gone." With encouragement, the petitioner repeated his earlier statement implicating himself in the two safe robberies and told the police officers that he could show them where a safe was located. So the police officers left the police station and made a trip to Orange County, in the vicinity of Murphy School. The petitioner could not locate the safe from the McCracken Oil Company. During this search, petitioner was confused and unsure of the location of the safe. Both officers testified that they had little patience with the petitioner because he was drunk. On the way back to town, the petitioner brought up the Johnson safe again and directed the officers to where it was located.

At approximately 7:30 P. M. that night, the petitioner was interrogated for a third time in one of the interrogation rooms at the Durham Police Station. On this occasion there were four law enforcement officers present, the two police officers who had been with the petitioner all day, plus the Police Chief of the City of Oxford and a Special Agent from the State Bureau of Investigation. The S.B.I. agent testified that upon his arrival the petitioner was warned as to his rights to remain silent and his right to counsel. The Police Chief and the S.B.I. agent testified that the petitioner had been drinking previously and that he had an odor of alcohol about him; that his eyes were red and his hair was mussed and out of place. The officers testified that at this time the petitioner asked repeatedly that he be given a drink. This period of interrogation lasted until around midnight and during the course of the questioning, the petitioner made the same statement that he had made earlier to the other police officers; however, the petitioner had not previously made a written statement and refused to sign one at that time.

The next morning, November 19, 1964, the petitioner was taken from the Durham Jail for a second trip to Orange County for the purpose of finding the McCracken Oil Company safe. At this time, the petitioner was suffering from an acute hangover after his extended drunk and was noticeably nervous and sick. After a search of three or four hours, the safe was finally located.

It was not contended that the petitioner made further incriminating statements on November 19, 1964. He simply accompanied the officers to Orange County and after considerable search they were able to locate the McCracken Oil Company safe. All the incriminating statements in question were made on November 18, 1964.

On the basis of these facts, the Court grants the relief requested by the petitioner for the reasons hereinafter set forth:

The first two contentions of the petitioner would seem to be interconnected and will be joined for discussion purposes. The basic contention is that *the petitioner's state of intoxication rendered his statements involuntary* under the applicable standards *and the admission of these statements was a violation of due process.* With this contention the Court is in agreement.

The dictate of the Fifth Amendment of the Constitution commanding that no person "shall be compelled in any criminal case to be a witness against himself" reminds us that our system of criminal prosecution is accusatorial, not inquisitional; that is, "a system in which the State must establish guilt by evidence, independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth." *Rogers v. Richmond,* 365 U. S. 534, 5 L. Ed 2d 760, 81 S. Ct. 735 (1961).

The danger inherent in a system without our constitutional safeguards is noted in *Escobedo v. Illinois,* 378 U. S. 478, 12 L. Ed. 2d 977, 84 S. Ct. 1758 (1964):

> "We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will in the long run, be more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation."

A federal standard for determining the voluntariness of confessions was formulated in *Bram v. U. S.,* 168 U.S. 532, 42 L. Ed. 568, 18 S. Ct. 183 (1897), and the basis for the standard was the protection offered by the Fifth Amendment. A marked shift to the federal standard in state cases began with *Lisenba v. California,* 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280 (1941), and culminated in *Malloy v. Hogan,* 378 U.S. 1, 12 L. Ed. 2d 653, 84 S. Ct. 1489 (1964) where the court stated:

> "We hold today that the Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgement by the states. . . . The Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement—the right of a person to remain silent unless he chooses to speak in an unfettered exercise of his own will. . . ."

Consequently, the federal and state courts are bound by the same standards. If a confession would be offensive in a federal court, because it is not the "unfettered exercise of his own will," it should also be offensive to the state court.

If such a confession which offends due process forms any part of the basis for a criminal conviction, then the conviction cannot stand. As the Supreme Court said in *Jackson v. Denno*, 378 U.S. 368, 12 L. Ed. 2d 908, 84 S. Ct. 1774 (1964), "it is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, *Rogers v. Richmond*, 365 U.S. 534, 5 L. Ed. 760, 81 S. Ct. 735, and even though there is ample evidence aside from the confession to support the conviction." (citations omitted)

In this proceeding the Court is not called upon to decide the guilt or innocence of the petitioner. The question before this Court is whether the petitioner's conviction and subsequent imprisonment were within due process if the confessions admitted at his trial were involuntary.

Numerous decisions of the Supreme Court have established the standards governing the admission of confessions into evidence. The issue of voluntariness must be resolved by this Court after a careful scrutiny of the facts and circumstances without being bound by the findings of the state court. This

procedure was formulated in *Davis v. N. C.*, 384 U.S. 737, 16 L. Ed. 2d 895, ... S. Ct. ..... (1966) and reaffirmed recently in *Smallwood v. Warden*, 4 Cir., ... F. 2d ..... (1966), where it was established that the court had the duty to make an independent determination of the ultimate issue of voluntariness.

With reference to a standard for voluntariness, the court in *Davis v. North Carolina, supra*, said:

> "The standard for voluntariness which has evolved in state courts under the due process clause of the Fourteenth Amendment is the same general standard which applies to federal prosecutions. . . . A standard grounded in the policies of the privilege against self-incrimination. *Malloy v. Hogan*, 378 U.S. 1, 6-8, 12 L. Ed. 2d 653, 658, 659, 84 S. Ct. 1489.

The standard of voluntariness has been steadily changing, flowing in the direction of restricting the admissibility of confessions obtained by questionable practices. Beginning with *Brown v. Miss.*, 297 U.S. 278, 80 L. Ed. 682, 56 S. Ct. 461 (1935) which was the first case where the Supreme Court held that the Due Process Clause prohibited the states from using the coerced confession of an accused against him, the courts have become stricter in admitting confessions and more liberal in construing the privilege against self incrimination. The courts have not hesitated to strike down any rule or decision in this area, which is inconsistent with individual liberty and due process.

The rationale of these decisions would surely hold that the confessions made by the petitioner in this case are offensive to due process and thus inadmissible. *The essential fact that the petitioner was under the influence of alcohol and drugs to such an extent as to effect his judgment and that he was interrogated in that condition would render the statements involuntary.*

The facts leave little doubt as to the petitioner's state of intoxication. He was arrested for driving under the influence. The investigating officer noted he was too drunk to make a statement. At the initial interrogation the officers admitted the petitioner was intoxicated.

At the second interrogation, one police officer stated the petitioner was already gone. Later that afternoon both officers had little patience with the petitioner because he was drunk.

At the third interrogation of the day, which lasted from before 7:30 P. M. to midnight, the fact that the petitioner was still under the influence was apparent to all present.

In each of the three interrogation sessions, the petitioner was admittedly in some state of intoxication, and while he was in this state he was interrogated for the purpose of eliciting a confession. This state of intoxication prevented the petitioner from making a confession which could be considered voluntary.

As was stated in *Culombe v. Connecticut*, 367 U.S. 568, 6 L. Ed. 2d 1037, 81 S. Ct. 1860 (1961):

> "No single litmus paper test for constitutionally impermissible interrogation has been evolved . . . the ultimate test remains . . . the test for voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. *Rogers v. Richmond*, 365 U.S. 534, 5 L. Ed. 2d 760, 81 S. Ct. 735. The latter distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however used, propels or helps to propel the confession."

Using this test the petitioner's confession was not admissible.

A person "under the influence" has been defined in *State v. Carroll*, 226 N. C. 237, 240, 37 S. E. 2d 688 (1946) as "one who has lost control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties." Since the petitioner was charged with driving under the influence, the arresting officers obviously were of the opinion that his faculties were so impaired.

Was this confession the product of an "essentially free and unconstrained choice of its maker?" This Court must answer in the negative. Any decision to incriminate made in the intoxicated state of petitioner could not be free and unconstrained. A person who has lost control of his mental faculties is incapable of making an admissible confession. The petitioner's will had been overborne by the alcohol and drugs. *Whether he had a false sense of confidence as evidenced by his statement that they would still have to prove anything he said or an acute sense of remorse, his capacity for self-determination was critically impaired, rendering any confession gained objectionable.*

By the applicable standards, a confession is not voluntary simply when it is shown that it is not produced by a promise or threat. A confession is voluntary in law if, and only if, it is voluntarily made. *Wan v. United States*, 266 U.S. 1, 69 L. Ed. 131, 45 S. Ct. 1 (1924).

As Chief Justice Warren said in *Townsend v. Sain*, 372 U.S. 293, 9 L. Ed. 2d 770, 83 S. Ct. 745 (1963):

> "If an individual's 'will was overborne' or if his confession was not the product of a rational intellect and a 'free will' his confession is inadmissible because coerced."

Coercion can be mental as well as physical. *Blackburn v. Alabama*, 361 U.S. 199, 206, 4 L. Ed. 2d 242, 80 S. Ct. 274 (1960).

Petitioner's statements were not made in an atmosphere favorable to the petitioner. He was not a drunk who staggered up to the policeman on the corner and made incriminating statements. The petitioner was under arrest. He was in custody, and, after making initial incriminating statements, underwent custodial interrogation.

A confession made by one in the petitioner's state of intoxication could not be the product of a rational intellect and a free will. Indeed, it is a paradox that the petitioner could not make a statement concerning the accident because he was too drunk, yet he was capable of making statements that put him in prison.

The contention that the statements were voluntary as the petitioner was warned of his right to remain silent and of his right to counsel and that he waived these rights is without merit. As stated by Justice Black in *Johnson v. Verbst,* 304 U.S. 458, 82 L. Ed. 1461, 58 S. Ct. 1019 (1937):

> "Courts indulge every reasonable presumption against waiver 'of fundamental rights' and that we 'do not presume acquiescence in the loss of fundamental rights.' A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver . . . must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

The accused may always waive his rights, but this waiver must be made voluntarily, knowingly, and intelligently. *Escobedo v. Illinois, supra.*

However, no such waiver can be said to have taken place in this case. The petitioner in his condition was incapable of acting knowingly or intelligently. Once in custody and when the

investigation had focused on the petitioner as the accused, at that moment a cloak of constitutional rights enveloped the petitioner. This cloak could only be removed by some affirmative action on the part of the petitioner and at the time the petitioner was incapable of any such affirmative action. *Even though the petitioner in his intoxicated state might attempt to waive his constitutional rights to remain silent or to have counsel, the waiver would have to be ineffectual because the petitioner's judgment was impaired.* To waive his constitutional rights, the petitioner must be capable of doing so in a voluntary, knowing, and intelligent manner. The petitioner was not in that position.

Without an effective waiver, the petitioner had a constitutional right to remain silent. Therefore, any questioning by police officers which in fact produced a confession which was not the product of a free intellect renders that confession inadmissible. *Townsend v. Sain, supra.* As stated before, the fact that the confession is true or that the petitioner is guilty does not remove the fact that the confession was obtained through improper methods and therefore offends due process. If the confession offends due process, then the conviction, which is based in any part on such confession, cannot be allowed to stand.

Since the relief requested by the petitioner has been granted on his first and second contentions, protracted discussion of this third contention is unnecessary. However, the Court feels obligated to comment on it. The contention simply stated is that the North Carolina test for voluntariness as applied in the case uses reliability as the standard. The petitioner contends that this clearly falls within the class of the unconstitutional standard of voluntariness prohibited by the Supreme Court in *Rogers v. Richmond, supra.*

In *Rogers* the Court held that the application by the trial court of a standard of voluntariness "infected by the inclusion

of references to probable reliability" was an unconstitutional standard by which to determine voluntariness.

Sufficient to say that we do not agree with this contention of the petitioner. In the *Rogers* case the Court had made specific statements that voluntariness should be viewed in terms of truthfulness. In a review of the applicable North Carolina cases, there is no such specific reference to truthfulness, reliability, or trustworthiness. Therefore, the North Carolina standard of voluntariness would not seem to fall within the prohibition of *Rogers*.

This case focuses attention again on the ever present problem in the administration of justice of the difficulty involved in trying to balance and reconcile the rights of a defendant, even though guilty, to be tried consistent with constitutional protections, and the obligation of law enforcement personnel to investigate and bring before the courts those in violation of the law.

For the reasons stated, it is concluded that the verdict of guilty and the judgment pronounced thereon should be vacated and set aside. The State may, if it so elects, retry the petitioner, provided such action is taken within six months. Otherwise, the petitioner will be discharged.

Eugene A. Gordon
United States District Judge

November 29, 1966

A True Copy

Teste:

Herman Amasa Smith, Clerk

By: Wayne N. Everhart
Deputy Clerk.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11,884.

Louis Anthony Logner,
Appellee,

versus

State of North Carolina,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AT GREENSBORO. EUGENE A. GORDON, DISTRICT JUDGE.

(Argued March 4, 1968. Decided March 21, 1968.)

Before BRYAN, WINTER and BUTZNER, Circuit Judges.

Dan K. Edwards, Solicitor, and Anthony Mason Brannon, Assistant Solicitor, Tenth Solicitorial District of the State of North Carolina, for Appellant, and Richard M. Hutson, II, and Norman E. Williams (Court-assigned counsel) for Appellee.

PER CURIAM:

The alleged confession of Louis Anthony Logner used in his trial on July 28, 1965 for felony in a State court of North Carolina was declared by the United States District Court to be involuntary and therefore vitiating his conviction. On November 29, 1966 the Federal Court directed that Logner be released from further custody unless before May 25, 1967 the State should retry him.

This decision[1] was delivered on Logner's petition for habeas corpus after the conviction had been affirmed by the highest court of the State, which held the confession voluntary.[2] Certiorari was denied by the United States Supreme Court.[3] The Attorney General of North Carolina participated in the habeas corpus hearing but the State took no appeal.

On the call of the criminal case in April 1967 for retrial in the State nisi prius court, the judge declined to retry it. Instead he directed the State Solicitor, the local prosecutor, to move the Federal court to permit him to "intervene and to be heard in this case, and that from such Order entered upon such petition this matter can then be proceeded with in the proper tribunal." The basis of this action was the judge's view that under the laws of North Carolina the Attorney General was not authorized to appear for the State in the habeas corpus hearing, but that it was solely the responsibility and duty of the Solicitor. He concluded that, as the latter had no notice of the proceeding and did not appear, the order on the habeas corpus application was ineffective.

The District Judge on April 26, 1967 received the Solicitor's petition for the further hearing upon the habeas peti-

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[1] Logner v. State of North Carolina, 260 F.Supp. 970 (N.C. 1966).

[2] State v. Logner, 266 N.C. 238, 145 S.E.2d 867 (1966).

[3] Logner v. North Carolina, 384 US 1013 (1966).

tion. On notice to the Solicitor as well as to the Attorney General, the District Court on May 9, 1967 directed the Solicitor to file a memorandum brief in support of his petition. His brief was submitted on June 8, 1967 and one for Logner on June 26. By order of August 9, 1967 the petition for rehearing was denied, and notice of this action immediately forwarded to the Solicitor and the Attorney General.

A review of the record does not reveal to us error in the District Court's first order or in the second. Particularly, no violation appears of 28 USC 2254 as it was amended effective November 2, 1966, i.e. during the pendency of this case. Since decision is now rested on the record we have no occasion to pass upon the primacy of representation of the State as between the Attorney General and the Solicitor at the habeas corpus hearing.

However, affirmance here is also fortified by the failure of North Carolina to appeal the original order of the District Court within the 30-day period fixed by statute, 28 USC 2107. Likewise the State's omission to seek a rehearing of the order for more than four months gives ground for affirmance, even assuming as we have, arguendo, that the case was still open to intervention for a rehearing.

Affirmed.

APPENDIX E

NO. 744 FOURTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term, 1965

***

WARRANT - Safe Cracking and Safe Robbery

R. G. Morris, being duly sworn on information, says that Louis Anthony Logner on or about the 17th day of November, 1964 with force and arms, at and in the County aforesaid, and within Durham County, did willfully, maliciously and unlawfully and feloniously with the use of drills and other tools, to wit: and acylethene torch did attempt and did actually break and force open a safe or vault, the property of the McCracken Oil Co., Inc. of Oxford, N. C. said safe or vault at said time being used for storing money and other valuables, and did take and steal in United States currency $1,304 and negotiable checks in the amount of $8,786.99 all the property of the McCracken Oil Co., Inc., Oxford, N. C. Chapter 14, Sec. 89 Sub. Sec. #1 against the statute in such cases made and provided, and against the peace and dignity of the State.

/s/ R. G. Morris
Complainant.

Sworn to and subscribed before me
this 20th day of November, 1964.

/s/ W. R. Evans (SEAL)
Desk Officer, Durham
Police Dept.

INDICTMENT CASE NO. 7479 JULY 28, CRIMINAL TERM, 1965

STATE OF NORTH CAROLINA
DURHAM COUNTY

The jurors for the State upon their oath present, that Louis Anthony Logner of the County of Durham, on the 17th day of November, 1964, with force and arms at and in the County aforesaid did willfully, unlawfully and feloniously with the use of drills and other tools, to wit: a acylethene torch, did attempt and did actually break and force open a safe or vault, the property of the McCracken Oil Co., Inc. of Oxford, N. C., said safe being located in Durham County, said safe at

said time being used for storing money and other valuables, and did take and steal in United States currency $1,304 and negotiable checks in the amount of $8,786.99 all the property of the McCracken Oil Co., Inc. of Oxford, N. C., in violation of N.C. G.S. 14-89.1

/s/ Daniel K. Edwards, Solicitor

The bill was returned by the Grand Jury as a True Bill.

PLEA, JURY AND VERDICT

Before the impaneling of the jury and at the July 28, 1965, Criminal Term of the Superior Court for Durham County, came the defendant in his proper person and said that he is not guilty of the crime charged in the bill of indictments and the defendant entered a plea of Not Guilty thereto.

Whereupon the following jurors, to wit, Robert S. Peake, and eleven (11) others, were duly sworn and impaneled to hear said cases, who, for their VERDICT, say:

That the defendant, Louis Anthony Logner, is guilty as charged in the Bill of Indictment No. 7479.

JUDGMENT AND APPEAL ENTRIES

JUDGMENT; Let the defendant be confined to State's Prison at hard labor for a term of not less than ten years or more than fifteen years.

APPEAL ENTRIES: On the coming in of the verdict of the jury the defendant moved in open court to set the verdict aside as being contrary to the evidence. Motion denied. Exception.
DEFENDANT'S EXCEPTION NO. 10

Then the defendant moved in open court to set aside the verdict for errors committed in this course, assigned and to be assigned. Motion Denied. Exception.
DEFENDANT'S EXCEPTION NO. 11

Then defendant gives NOTICE of APPEAL in open court. Further notice waived. Defendant allowed sixty days in which to make up and serve statement of case on appeal. The State is allowed thirty days thereafter in which to file countercase or exceptions.

Appeal bond set at $200 and appearance bond set at $10,000.

STATE'S EVIDENCE

R. T. WILLIFORD testified:

I am an officer and manager of the McCracken Oil Co. in Oxford, North Carolina, and I held these offices on November 17, 1964. On that date, McCracken Oil Co., Inc. was a corporation duly organized and doing business under and by virtue of the laws of the State of North Carolina. We have a private office in a walk-in vault in the end of the building. The safe is used to hold collections, money--checks and cash. On November 16, 1964 there was approximately $1,300 in cash and approximately Eighty-six and Eighty-seven Hundred Dollars in checks in the safe. When I went into the office on the morning of November 17, the walk-in vault had been broken into, the door ripped away and the money chest had been turned out into the hallway and the money chest ripped or torn out of the concrete in which it was set in, and the money chest was missing.

I next saw the safe in the trunk of the automobile of Mr. Harton who is an SBI Agent. The safe had a big hole cut into the side of it (State offers into evidence Exhibits 3 and

4 which were photographs identified by the witness as the safe which was the property of the McCracken Oil Co., Inc., and which was at the time it was taken from the McCracken Oil Co., Inc. premises in Oxford used for storing money and other valuable property of the McCracken Oil Co., Inc. The photographs were offered for the purpose of illustrating the witness' testimony). I do not know the defendant, Louis Logner.

CROSS EXAMINATION (By Mr. Galifianakis):
It appeared to me that the metal around the concrete was cut off by some type chisel or instrument and then the concrete beat away or hammered and chiseled away from the money chest. The metal chest and the concrete in which it was imbedded weighed approximately 1,000 pounds. I do not know how much the money chest alone weighed. I did not see any of this happen.

MR. L. M. HARTON testified:

I am an SBI Agent and have been for 9 years. I investigated the matter now being tried, on November 17, 1964 at the McCracken Oil Co., in Oxford, N. C. I took both pictures (State's Exhibits 1 & 2) showing the office part of the McCracken building, and showing the way the metal part of the safe was cut away from the concrete part of the safe. This picture (State's Exhibit 3) shows the vault part of the safe.

THE COURT: The pictures are not substantive evidence, only illustrative.

The whole part of the safe is about 1,000 pounds and the metal part is about 300 pounds and 1 3/4 inches of hardened steel. It had a hole that was burned into it. I first saw this safe shown in State's Exhibits 3 & 4 in the back of Detective Morris' automobile, which was in Orange County at the time.

Q Now, where had you been before you saw the safe on that occasion?
A We had been talking with Mr. Logner.
OBJECTION.
COURT: I will let him say he had been talking to him.

It was on November 19, 1964, and the safe had a hole in it with a plug that had been cut by force and fallen inside.

Chief of Police, White of Oxford, Detective Morris, one more detective whose name I have forgotten, and I believe Mr. Holt, and Louis Logner went to Orange County with me from the Police Department in Durham. We used two cars. Chief White and I were in one and Detective Morris and the other detective in the other.

When we got to the Durham-Orange County line, we were searching for the safe. All of us got out and started looking for the safe on a dirt road, both sides of it. It was our information that it was very close to the road, and after looking for approximately two or three hours and still couldn't find it, Mr. Morris took the defendant and went to check another road, and while they were gone checking this road just a short distance from where we were looking they found the safe and brought it back to where we were originally. That is the safe shown in State's Exhibits 3 & 4, and which I took in my automobile to Oxford and showed to Mr. Williford, who identified it as belonging to the McCracken Oil Co.

The first time I saw the defendant was on Wednesday night of that week. I believe it was the 19th of November--no the 18th of November, 1964 that I saw him in jail in Durham. I was with Chief White. The defendant was in jail upstairs all of the time when I first observed him. In the room where they took fingerprints and mug shots adjacent to the jail, and present were Chief White, Mr. Morris, myself and Mr. Hatley.

Q Was there any conversation held at that time with the defendant?

A Yes, sir.

Q What, if anything, did you hear Louis Logner say?

OBJECTION.

THE COURT THEN EXCUSED THE JURY FROM THE COURTROOM AND OUT OF THE PRESENCE OF THE JURY THE FOLLOWING PROCEEDINGS WERE HAD:

VOIR DIRE EXAMINATION

THE COURT: Do you want to examine Mr. Harton as to whether or not the statement is voluntary?

MR. GALIFIANAKIS: Yes sir.

MR. HARTON testified:

VOIR DIRE EXAMINATION

Chief White of Oxford called me on this investigation on the morning of November 17, 1964. I reported to the McCracken Oil Co. in Oxford and met Chief White, Mr. Williford and other employees there. I first encountered the Durham detectives on the night of the 18th, Wednesday I believe it was, approximately 7:30 P.M. I think I came at the request of both Detective Morris and Mr. Satterfield, our agent in Durham. When I first saw the defendant he was in the little room up adjacent to the jail where fingerprints and mug shots are made. There are some chairs and a couple of tables and so forth. Mr. Morris, Mr. Hatley, Mr. Logner, Chief White and I were there. This was the first time I had seen him in person. I was two or three feet close to him. He had been drinking. I could smell liquor on his breath. His eyes were kinda red. He was drinking but he was not drunk at the time I talked with him. I understood from Mr. Morris the defendant was driving his automobile that afternoon sometime and had an accident with the car and he got him for driving drunk.

Mr. Morris had already talked with the defendant at length by the time I got there. He had talked to him for sometime, yes sir, I don't know how long. They were in the process of interrogation, I believe. Actually we went back over the story he had already told Mr. Morris and Mr. Hatley, but I was not present when he told them. The defendant was sitting down in the interrogation room. First, I knew he had been talking with Detective Morris, but I warned him of his rights to start with in the presence.

THE COURT: What did you tell--you say warned him of his right--what did you tell him?

I identified myself and introduced Chief White. I told him that he didn't have to talk with us, that anything he said could be used against him, that he was entitled to a lawyer if he wanted one and we would be glad to call him one if he wanted us to. He said he didn't need a lawyer.

Q Said he didn't need a lawyer. Did you think he needed a lawyer?
OBJECTION.
SUSTAINED.
I don't know if Detective Morris gave him the same warning. I was not there.
Q Did you advise him of his rights to remain silent?
Yes, sir. I don't recall that he said anything at that instant.

There were three of us there most of the time I was talking to him and Mr. Hatley came up for a while I know. As far as I could tell he knew perfectly what he was saying. He wasn't drunk when I talked with him. I was told he had been arrested for drunken driving. I didn't know how long he had been under interrogation. He had been in custody for some length of time.

I couldn't say how long because I wasn't

here when he was arrested. I take it the defendant had been in jail prior to when I saw him, I am not sure. I was not sure of his condition. I am no doctor, but I know he had been drinking some but he was not drunk.

I do not know if the defendant had been taking pills. I do not recall what he was wearing. It wasn't any dress clothes--more or less everyday clothes, I suppose.

We got to talking about this safe robbery over at Oxford. I asked him to relate the deal over at the safe robbery in Oxford, who was involved, and who went with him and what they did and where they went. I knew he had already told Detective Morris about this deal in Oxford. I asked him to go back over the story with me and he did.

I asked him a series of questions. I asked him if he had been to Oxford on the past Monday night--that was on the night of the 16th and the morning of the 17th of '64 November.

He said he was there Monday night at the McCracken Oil Co., getting the safe. From what he described over there he and two more men were there. They went in on his car which was a 1958 DeSoto and parked on a dirt street near the McCracken Oil Co. He said it was his DeSoto. He said they cut the fence on the outskirts of the place near a used car lot with a pair of bolt cutters. He said a fellow by the name of Claiborne McKee and an escaped convict by the name of Ranson were there. They had a long prize bar with a fork on one end and hook on the other, a sledge hammer and a chisel and bolt cutters. He said that he and McKee were on the inside and that Ranson was across the street at a lumber company with a shotgun.

When he was giving this testimony to me, he asked me for a drink, but I refused to give him one. I heard him ask Detective Morris

for one first. He was very cooperative. He said there was approximately $1,800 in it, in cash, that the checks were burned up and that he got approximately $390 for his share. I don't know how much actual cash there was. I know what Mr. Williford told me approximately $1,800 plus $8,500 in checks..

I knew the defendant had a record before I interrogated him, and I knew that he had recently been a prisoner, a few months before this incident. I believe I would call him a professional safe cracker.

I don't know why a professional safe cracker would freely give me this information a few months after he got out of jail.

I wouldn't think that he was complete drunk. I don't know anything about alcoholism. He talked medium, wasn't too loud and not too soft. He wasn't too articulate but was very understandable.

REDIRECT EXAMINATION (By Mr. Edwards):
Neither I nor anyone in my presence threatened this defendant to make him make any statement to me nor did I nor anyone present offer him any hope of reward in order to induce him to make any statement to me. All statements made in my presence by this defendant were free and voluntary and of his own accord.

THE COURT: Let the record show that the court finds as a fact that the State's witness Harton talked to the defendant in the jail or interrogation room off of the jail in Durham County on the 18th day of November, 1964; that at that time the defendant Logner had been drinking but was not drunk; that the defendant's eyes were red; that the witness advised Mr. Logner that he had a right to remain silent and tell them nothing. He further advised Mr. Logner that he had a right to a lawyer and Mr. Logner replied that he didn't

need one, and that after that conversation the defendant, Mr. Logner, made a statement concerning the safe and office of McCracken Oil Company in Oxford, North Carolina, and that defendant had been heretofore arrested and charged with driving an automobile under the influence of alcohol; that such statements were made freely and voluntarily without reward or hope of reward or threats on the part of the defendant, Mr. Logner, and further finds that no threats, reward, or hope of reward were made against or offered to Mr. Logner and that said statements were made freely and voluntarily by Mr. Logner.

OBJECTION to court's findings.
OVERRULED. EXCEPTION.
DEFENDANT'S EXCEPTION NO. 1

RICHARD MORRIS testified:

I recognize the defendant. I first talked with him approximately the 18th of November, 1964 at approximately 11:30 a.m. At that time he was practically at the intersection of North Mangum Street and East Chapel Hill Street. Let me correct that. The first time I talked with Mr. Logner was on Morgan Street. The next time I talked to him was 10, 12 or 15 minutes later, at the intersection of Mangum and Morgan--Mangum and Chapel Hill Streets. He was under the influence--I would say--of intoxicants. I arrested him for driving while under the influence of intoxicating liquor.

At that time he had ran into--he attempted to make a left turn. We were a little distance behind him. He attempted to make a left turn. He was headed east on Chapel Hill Street. He was attempting to make a left turn into the A and P Store and in doing so his car collided with two more cars, and we arrived on the scene. As I said, we were right behind him practically, and put Louis under arrest and put him in my patrol car and I picked up the

radio and called for the traffic--the uniform officers to investigate the accident. I then took the defendant back to jail and placed under arrest for driving while under the influence of intoxicating liquor. I talked to him at that time about the matter that is now being tried before the court. When I put him in the car, Louis said something pertaining about he would pay the other people's damages and that I knew where the money came from, and I knew where he got the money. He said "I will pay the damage, I have got the money, you know where the money came from," and I told him right then, I said "Louis, now, I want to warn you that anything you tell me that can be used against you in a court of law. You have got a right to an attorney, you don't have to tell me anything."

We came to headquarters and he just kept talking about paying the damage; that was the main conversation. After we got to the police station, we took him in the interrogation room. We talked with him some few minutes. I would say, the best I can remember fifteen, not over thirty minutes. We talked about safe robbery and safe jobs--a safe job which we knew nothing about at the time, Mr. George Johnson's safe on Indian Trail which is inside the City limits.

This was just more or less a continuation of the conversation about the money where he got the money, and told us about the Johnson safe and then we got to questioning him, of course, about the details of the Johnson safe, and he went into detail about it and stated that he would take us and show us where the Johnson safe was, and then he got in on the Oxford safe--got to talking about it. I don't know just how exactly he got on the Oxford safe.

THE COURT: Let me ask the officer before he made any statement to you did you advise him of his right to have counsel?

A Yes sir.

THE COURT: What did he say with reference to that?

As I recall there was no--the only statement that I recall he made in reference to that was he says, "I can tell you anything, you have to prove it, you are going to have to prove." That is about all I can remember he said in reference to offering him an attorney. He didn't say he wanted a lawyer. I told him he didn't have to say anything to me, and what he did say to me would be used against him in a court of law.

I did not say anything about the McCracken Oil Company safe because I wasn't particularly interested in it because--I knew that they had had a safe job. I read it in the paper, and I wasn't particularly--I am interested in all safe jobs, but I wasn't particularly interested in that safe job because it didn't happen in my jurisdiction.

After he volunteered the information that he had something to do with the McCracken safe job, not knowing too much about what happened over there, I didn't ask him too many questions except he told me in general what had happened about him going over there with Claiborne McKee and Benjamin Edward Ranson in his car and cutting a hole in the fence with a pair of bolt cutters and going in the building and at first attempting to go through a wall and they couldn't get through it, and then they busted open the vault--ripped it from the top down-- and went in and got the nigger-head safe out and brought it back to Durham and about Ranson watching across the street at the lumber yard with the shotgun. At that time I didn't know anything about whether anybody had cut the fence with a bolt cutter or not.

Then I put him in jail. I talked to him again the following day, somewhere between 2:30 and 3:00 o'clock. Detective Hatley and I, I

believe, were the only two there at the time that I recall. I would say the conversation lasted thirty minutes, not more than an hour--could have been an hour. Again at that time, I told him that he had a right to have a lawyer if he wanted one and had a right to remain silent if he wanted to remain silent. As I recall, he didn't make any--he kept--he kept--he did not say he wanted a lawyer. He kept saying that whatever he told me that I would have to prove it, he kept saying that over and over. This was the same afternoon. We arrested him at approximately 11:30 a.m. and this was approximately 2:30 or 3:00 p.m. the same day.

We talked to him the following day. Mr. Harton, Lynn Harton, the SBI agent, Mr. Hatley, and I, and Deputy Sheriff from Goldsboro, North Carolina, I believe, were present. Chief White may have been there. I don't recall whether he was there at that time or not. Most of the questioning was done by Mr. Harton. The County Sheriff from Goldsboro asked him a few questions in detail about a safe job that happened down there. I heard someone tell Logner that he have a lawyer if he wanted one and did not have to make any statement that he didn't want to make, could remain silent.

We took Logner in my car the first day, and went and found the Johnson safe. He took us and showed us where the Johnson safe was. This was on the afternoon he was arrested.

We took him in my car later the next day, if I remember correctly it was in the morning, and we stayed out there for quite a while. If I remember, it was in the morning, late in the morning. Louis Logner told us to go up to the school, Murphy School, I believe is what they call it. It is in the edge of Orange County, I would say, twelve miles, maybe fifteen, from Durham. After he told us to drive to Murphy School and we got up to the Murphy School and

turned left there beside of the Murphy School and started out that road, he went to describe that he thought he threw the safe up on a small bank.

He was apparently looking for a landmark--I mean looking for a bank that he had in mind that he stated he had thrown the safe on. So we were riding along slowly. After we passed the school some bit he says "Wait a minute, this looks like it", and we would stop and sometimes we would get out and go to the edge of the bank and look around a little bit, and he would say "no, this is not it", and we would drive further. That happened two or three times, and then Mr. Harton and people that were with him were behind us, and they would stop, of course, and we would all get out and look and he would decide that wasn't the place, and then we would go on further. That occurred until we split up. We finally split up and Louis Logner was in the car with me along with--I believe Lieut. Haithcock, and we left this road and turned right on another road, dirt road, and he says "this looks like the place". We were riding along right slow and I observed a high bank there fairly high, one that you could see on top of, and I saw something that looked like a safe, and I stopped, and we got out of the car and I looked up there and it was the safe. He said it was the safe that came out of the McCracken Oil Co. in Oxford.

He stated that when they got--after they got the safe, after he and McKee and Ranson got the safe out of Oxford that he brought it back to Durham and took it out to his house. At that time he was staying at 133 Pleasant Drive which is in the county, and he stated he threw it out in the yard until the next day about 12:30 or 1:00 o'clock and that he took it to a local garage. He wouldn't tell me who ran the garage or what the address was. The only thing he would say was people that I knew ran the garage, that I would be surprised

who they were, and he had the safe there and had it cut open with a torch and got the money out of it and then he took it out there and dumped it in Orange County.

THE COURT: Did he tell you what he did with the money?
A No sir.

He told me he got $1857.00. I don't recall him saying, he may have, as to what his share of it was.

CROSS EXAMINATION (By Mr. Galifianakis):
I have known the defendant for twenty years, if he has been here twenty years. Peg (the defendant) and I have always been friendly so far as I know. November 18th was the day he was arrested.

I was following him at the time he had the wreck, yes, but not prior to that. I was following him prior to the time he had the wreck, because I knew that--I didn't know but my opinion was he was too much under the influence to drive an automobile and we had talked with him when he was on the ground.

That was just a few minutes prior to that 11:30, 11:25 or 11:20, at a vacant lot between the Am-Vet Club and the Honda people. Detective Hatley was with me, but I do not recall that he talked with the defendant. He walked up to my side of the car and we exchanged a few words and we pulled off. I observed that he was in my opinion was intoxicated.

We went up the hill to Chapel Hill Street and I remarked, one of us remarked--I think it was I--I think I remarked to Mr. Hatley, "Well, you don't reckon he is going to get in his automobile and drive off", and being under the influence as much as I thought he was, we came back the same route we left the alley and saw his car turn into Morgan Street headed toward Mangum Street.

I had read about the Oxford safe and had knowledge of it. I have known Logner for twenty years. I did not have any notion that he was connected up with this offense, but I suspected Louis of being connected with any safe job. It would have been a natural connection for me to think that. I didn't have any suspicion at that time about any safe job.

When we followed him he was doing 5 or 10 miles an hour. Before we followed him I could smell alcohol; I assumed it to be liquor. I do not recall what he was wearing. I wouldn't say he was too steady. I wouldn't say he was staggering, but then again he wasn't too steady. He wasn't walking like a sober man would walk.

Seconds after he turned into Mangum Street, we heard a crash and one of us remarked "well he has hit something already."

In the alley I didn't warn him of his right to remain silent or have counsel. He wasn't under arrest or anything.

I saw the defendant getting out of his car and the other people getting out of their cars. I parked my car opposite of the cars that were involved in the wreck and went over and got Louis Logner. If I remember correctly, he had gotten out of the car and--we didn't pull him out of the car.

I am not sure who the City police officer was that came to the scene of the accident. I think I told him to make out the--told him briefly what had happened, and that we were taking Logner in to the station, going to book him for drunken driving.

Whether the defendant went over beyond the left center of the line I don't know. He sideswiped the first car that was parked and sideswiped the car that was coming down. The time was approximately 11:30, it could not have

been 12:00. The defendant just walked over to my car and I told him to get in the back seat and I got in the front seat. Then Detective Hatley got through there in just a minute or so and we brought him directly to headquarters to the interrogation room. I wasn't specifically going to talk to him. The main reason why I brought him to the interrogation room, No. 1 was to book him for drunken driving and No. 2 to find out more about this safe business he had admitted that he was in. We talked to him in the interrogation room. We done most of the listening and he did most of the talking. I would say he was under the influence of intoxicants at the time, which was about 11:45, maybe 12:00 o'clock. It was at 11:45 when I said to him, I must warn you anything you say may be used against you. He kept repeating, "I can tell you anything I want to, you have to prove it." That is the only answer he gave in response. I also told him he had a right to counsel. He had no reaction at all to that.

Before he mentioned the safe, he started off about I knew where he had gotten the money before we hardly set down in the automobile at the scene of the accident.

I assume that he was referring to the money that he had gotten out of these safes he had cracked. I did not find any appreciable amount of money on him. I don't remember how much money I found on him. We made a mistake in not searching his car. We had information that he had a load of cigarettes in the trunk.

One statement I remember in the interrogation room is the opening statement about advising him of his rights that he had a right to a lawyer. We stayed there not more than 30 minutes, I would say. Then I put him in jail until about 2:30 or 3:00. Then I brought him down to the interrogation room, if I remember, or either took him across from the

cell block, I don't recall which. He asked me for liquor on several occasions. I didn't give him any liquor. To my knowledge Hatley did not give him any. We were not together the whole time. I don't know about whether Detective Hatley could have brought some in some paper cups.

He didn't need any liquor to loosen him up. He was already gone. I didn't let him have any liquor because, for one thing I despise liquor, and I don't have anything to do with liquor. I hate it with a passion--because my wife was an alcoholic. I don't know if Hatley gave him liquor or not. I do not know whether he had any while in jail. We kept him about 30 minutes in the interrogation room or upstairs, this time and then we went to Orange County in two cars with Mr. Harton, S.B.I. agent, Lt. Haithcock, Chief White and the defendant. This was on November 18th. We went in the vicinity of Murphy School looking for the safe, but we did not find it. Actually we didn't look for it too much because he said "let's go back to town", and to be quite frank, we were getting disgusted with him and we came back to town and on the way back to town he brought up again the Johnson safe, and he says "I will show you where that is" and he took us at the location of a bank in the woods, which turned out to be the Johnson safe. This was on November 18 at around 4:00 p.m. I had no previous knowledge that the Johnson safe was cracked. The reason is that it was reported to the Sheriff's office and why we didn't get it, I don't know. I haven't figured that out. We called Ray and Holt wrecker service and we left them at the scene with the safe and we brought Louis back and locked him up. We did not stop at Carden's Dance Hall to get the defendant a beer. He was in pretty good shape then. I don't recall that we talked to him anymore that afternoon, but we interrogated him that night. I would just guess it was 8:30 or 9:00 o'clock. It may have been earlier. His condition was good

as far as I could determine. Well, I was concerned as to whether he was in pain or whether he wasn't, but I mean I wasn't concerned with the fact that he wanted a drink. That didn't bother me because that is natural for a man that is drinking.

I knew that the defendant had been doing a term in prison and that he had been released in June or July. After his release I had seen him going and coming. We have had some places under surveillance I may have seen him come and go. I remember one occasion where I was out at the Am-Vet's Club and I believe Louis was out there. We just talked shop. I don't care to explain the fact that he had been out of prison for just a few months and then made such a smooth confession.

RECROSS EXAMINATION (By Mr. Galifianakis):
On November 18th I was disgusted with the defendant when we were out in the vicinity of Murphy School and started on back. I was impatient with him. I don't care anything about people drinking. It kinda wears my patience thin fairly early. I really couldn't say at that time he was in a drunken condition. I really couldn't say what his condition was--not giving him any examination or having an examination performed. Peg was one of several people I had suspected.

LOUIS ANTHONY LOGNER testified:

I am the defendant in this case. On the morning of November 18, 1964 I left home and went to Jimmie Young's. I started drinking there and took some pills. I then took a nap. About 12:00 noon I woke up and drove to the Am-Vet's parking lot on Morgan Street. Detectives Hatley and Morris drove by and then returned about ten minutes later. I was sitting in my car. When they came back they stopped behind my car. Then they left and I was so drunk and pilled up I thought I'd better

leave. When I tried to turn my car at the corner of Mangum and Chapel Hill Streets, I was thrown over in the seat I was so drunk. I couldn't get up before I hit two or three cars.

I backed my car up and parked it. Mr. Hatley and Mr. Morris halfway dragged me out of the car. They put me in their car and took me to the police station to the fourth floor.

In the fingerprint room I told Mr. Morris I was sick and asked him for a drink. He told me no one would give me any alcohol. Then he said it would be all right if Mr. Hatley got me some. Mr. Hatley brought in four 2 oz. cups of whiskey. I drank them as fast as possible.

After I drank the whiskey my mind is a complete blank until the next morning when I woke up in the City jail. I do not recall going out of the courthouse that day.

I had been on a binge for approximately four or five weeks. I can drink anything. It makes no difference. I'll drink canned heat or shellac or shaving lotion. I take pills. Mostly Syndrox tablets called "green hornets". These pills are stimulants. These pills build you up when you are drinking. They relax me. I remember taking some Syndrox on the day of the wreck. I had approximately 200 or 300 of them in my car. Sometimes I take as many as six or seven at one time. I take them regularly. I had nothing to eat for breakfast or lunch the day of the wreck. I had the four cups of liquor at the police station but no lunch. I can't recall if I had dinner that night.

Before they gave me the liquor in the interrogation room, I do not remember any questions being asked. We just talked about the car wreck and being drunk.

The next thing I recall was waking up in jail on the 19th. Lucien Dunn was in jail too.

I asked him what I was charged with but he did not know. That morning I was called back to the fingerprint room. Mr. Morris said I had made a statement the night before. I told him to charge me with anything. I was so sick I wanted to go back and lay down.

Detective Brown, two S.B.I. agents and the Sheriff or Chief of Police from Goldsboro were there. I told them I would plead guilty to anything. I was sick all over. I had been drunk four or five weeks and then cut off. I did not take any pills in jail that I know.

The S.B.I. agent and Police Chief from Goldsboro handed me a warrant. I didn't read it. I just put it in my pocket.

Mr. Morris did not to my knowledge warn me of my right to remain silent or to have a lawyer. He did not tell me this at any time. If he told me on the 18th after I drank the liquor I wouldn't remember.

They continued to question me even after I said I would plead guilty to anything if they would let me lie down.

I told Mr. Morris I knew where a safe was located in Orange County. I did not tell him of any other safe. We went to Orange County that afternoon. It took four or five hours to locate the safe. I helped Mr. Morris put the safe in the car.

I knew the safe was there. I was drinking with some boys from Georgia when they dumped out the safe. I had nothing to do with getting the safe. I just knew where it was.

After they brought me back to Durham they transferred me to the County side. I did not have or want any dinner--too sick to eat. I had nothing to eat that day.

Mr. Morris and Mr. Hatley bought me a tall can of beer with a dollar I gave them while we were in Orange County.

I had no special reason to make a confession to Mr. Morris. I did tell him where the safe was when I got sober. I can tell when I am sober.

I have been arrested for public drunk many times. I can remember getting drunk at seven in the first grade. I have had a drinking problem just about all of my adult life. I have had some injuries. I was shot three times, had a broken pelvis and hernia. I have had my hand broken many times.

I served in the National Guard but I was discharged several months after the Guard was called out. I also served with the Navy. I received a medical discharge but I do not know on what diagnosis. I received a head injury in the Navy.

CROSS EXAMINATION (By Mr. Edwards):
In jail after I drank the four cups of liquor I was cut off. My mind was blank until I woke up the next day. I was so sick that I asked for a drink but was refused. I was taking pills on the day I had the wreck. It was around 12:00 o'clock when I took the last one. I did not take any in jail.

To the best of my memory, I never told Mr. Morris or any officer that I went to the McCracken Oil Co. with two other men on the 17th. I never told anybody that. To the best of my knowledge I never told them I cut through a fence with a bolt clipper at McCracken Oil Co. I am positive I did not tell them anything on the 19th.

I remember seeing Mr. Harton on the next morning, the 19th. I have always denied having anything to do with the McCracken Oil safe. I never admitted participation.

On the night of the 16th I was out at Am. Vet's Post No. 1 until approximately 2:00 a.m. on the 17th. I went home. I was driving my '58 Desoto, the same car I drove on the 18th.

On the morning of the 18th I was at Jimmie Young's about 6:30 a.m. I went there alone. There were a lot of people in and out.

On the morning of the 17th I went by my mother's about 8:30. I left there and went to Five Points in North Durham. I stayed in the area all morning. That afternoon I got drunk and went home. I stayed at home all afternoon. That night I went by Am Vet's on Highway 70 and then to Am Vet's on Morgan Street. I stayed there until I took two girls to buy them some clothes. I was drunk and do not remember the time. This was the night of the 17th. I remember their faces but not their names. I spent 25 or 30 dollars on them. I wanted to help them. I had worked some, but not regularly. I had last worked a week or two before this happened. I made about $30. I still had money to buy them clothes. I left them and went back to Am Vet's. I got pretty drunk and cannot swear when I went home.

I stayed at home until the next morning, the 18th. Then I went down to Jimmie Young's until about 12:00 o'clock noon. I was drunk when I left and I drove to Am Vet's on Morgan Street which was closed. That is when I saw Detective Morris.

I got with the three boys from Georgia on Monday morning after I left Am Vet's (Post No. 1) on Highway 70. They came by the house. They were riding around drinking. This was the morning of the 17th after I left the Am Vet's Club around 2:00 a.m. I had met these boys several months before. We rode around looking for some girls and drinking. We ended up in Orange County between 3:00 and 4:00 a.m. They stopped their car and dumped out a safe from the trunk. I was too drunk to remember clearly

where the place was.

I did not know where the Johnson safe was. To the best of my recollection I did not show it to Morris.

The boys from Georgia were driving a '57 Chevrolet with Georgia tags. I had seen the tags. So had Mr. Morris when he wrote down license numbers in the Am Vet's parking lot. He kept the club under surveillance. That night I didn't see the tags. It was getting close to 3:00 a.m. when they picked me up. I do not know their names. I had seen them three or four times. I have not seen them since.

Detective Morris was the only one present when Mr. Hatley gave me the drinks.

LUCIEN DUNN testified:

I reside at 803 Vickers Avenue but am presently in Guess Road Prison for public drunkenness. I was in jail in November, 1964. I was in jail with Louis Logner. He was brought in after dark. I had been picked up early that day between 9:00 or 10:00 a.m.

When Louis entered the cell I spoke to him. He looked like he felt awful. He had been drinking heavily. I have known him for 15 or 18 years, I know he drinks. I am an alcoholic myself. He was drunk and didn't seem to know me at the time. He was wobbling on the bench where he sat. I helped him to the bench. His eyes were red. He was not steady on his feet. I asked him what he was in for and he said he thought he had a wreck. He sat with his head bent over and weaving.

I don't remember the date or the day of the week. It was the day he had the wreck. I had been in jail all day. I saw the defendant setting up before daylight.

At breakfast he said he was too sick to eat. I don't know if he had any pills with him but I know he takes a green looking pill.

We were transferred to the County side and he was carried out. He did not eat lunch in jail. He was gone about one hour. When he came back he said they were questioning him about safes. He said he didn't know anything about it. I am sure they took him out again that day.

On the following day he still looked sick. He was shaking, he only looked well one time. That was when he brought in a candy box and asked me to hold it. Later he opened it and there were two pints of liquor inside. We drank it right quick.

CROSS EXAMINATION (By Mr. Edwards):
The defendant never asked me why he was in jail. Only stated he thought he was in for the wreck. It was around midnight on the first day when I saw him. I'm not sure of the date. He got the box with liquor in it the next day after lunch. He would not eat breakfast when he was sick. He was transferred to the County side shortly after lunch. I was transferred the same day.

MR. WAYNE NICHOLS WATSON testified:

I am a police officer with the City Police Department. In November, 1964 I was called to investigate an accident in which the defendant was involved. I do not remember the date. I came here without warning and do not have my report. It was roughly around 1:00 p.m. The accident was on Chapel Hill Street. Hugh Mark Bass was one of the drivers involved. I don't remember the other. The defendant had hit two cars. I talked to both drivers who had been hit. I did not talk to anyone else. Detective Morris and Hatley were already there when I arrived. I did not talk to the defendant.

I did not sign the warrant charging him with drunk driving. I believe Hatley and Morris signed it. The detectives took the defendant to the police station in their car. It looked to me like he might have been drunk.

(At this point the State agreed to allow a copy of the wreck report be introduced into evidence as DEFENDANT'S EXHIBIT NO. 1)

This is part of the report I filled in. It shows that the accident occurred at 12:05 p.m. on the 18th of November. The report includes a remark to the effect that the driver of vehicle No. 1, Mr. Logner, was too drunk to make a statement.

I saw the defendant again about 30 minutes after the accident. In my opinion he was drunk at that time.

CROSS EXAMINATION (By Mr. Edwards):
I saw the defendant in the Detective Bureau. I believe Detectives Morris and Hatley were talking to him. I did not speak to him. When I saw him at the scene of the accident he was already in the patrol car.

REDIRECT EXAMINATION (By Mr. Galifianakis):
I only partially followed up the accident.

MRS. PAULINE BOWLES testified:

I am the accused's mother. I saw my son the day before he was involved in an accident. He came by my home. He was intoxicated. He is in the habit of getting intoxicated for years.

He has been at Duke many times but I don't know if he has ever been diagnosed as an alcoholic.

Before he came to my house on the 17th he had been drinking for a week or two. He drinks whiskey or anything he can get his

hands on. He is in the habit of taking Syndrox pills.

When he came by I told him I was afraid they would pick him up for driving drunk. I offered to call a cab. He refused. He said he was going down to North Durham. He was foaming at the mouth as he does when he gets acutely drunk.

I didn't see him again until around Thursday when I saw him with Detective Morris and Hatley downstairs. He was still in an intoxicated condition. He wasn't himself. I saw him again the next week.

He was discharged from the Navy after receiving a head injury for phycho-neurotic trauma.

I am a licensed practical nurse. I have been since 1947.

CROSS EXAMINATION (By Mr. Edwards):
I worked at night back in November, 1964. Louis would come to see me about everyday if he was not working. He did some painting at the Am Vet's Club in November. I don't know if he worked during the three or four weeks prior to his arrest when he was drinking. I do not know if he had any income during November. I give him money when he needs it. I gave him $90 to get his car fixed in November, prior to the 17th. I am not sure of the date.

He came by to see me on the 17th around 9:00 a.m. He had not been by on the 16th. He was driving his Desoto at the time. I guess I talked to him around 5 or 10 minutes. He drove off headed for North Durham.

MR. J. S. HATLEY testified:

I am a detective with the City Police Department and have been for 25 years. I have never

given the defendant any liquor to drink. I was with the defendant in the fingerprint room. I don't remember the date, but I was there. The first time with Detective Morris and on that occasion I never gave the defendant any whiskey, nor anything intoxicating, nor any pill. I did not see Detective Morris give him any intoxicating beverage. The first occasion I saw the defendant was on Chapel Hill Street. He was intoxicated. He didn't talk to me on Chapel Hill Street. I got out of the car and went over to where the wreck was, and he was put in the car of Detective Morris and they sat in the car and waited until I came and then we came to the station. We did not go to the fingerprint room right away. We went 30 minutes later. I do not remember talking to him up there in the fingerprint room. I was there when Mr. Harton was there, but I don't know whether it was the next morning or sometime during the day. I did not see anybody offer or give the defendant any intoxicating beverage of any kind.

CROSS EXAMINATION (By Mr. Galifianakis):

The defendant said nothing to me at the scene of the accident. I don't remember anything specifically that was said to the defendant on the way to the station. The defendant said he had money to pay the damages for the other two cars. I do not remember anything specifically that I or Detective Morris talked to him about at that time. When we came to the courthouse we went to the interrogation room downstairs. Detective Morris and I interrogated him in there 30 or 45 minutes, I don't know exactly.

I have known the defendant for a number of years. I know he drinks and has been in jail and in court a number of times for drinking. After we turned him over to the fingerprint man maybe an hour elapsed before we saw him again. I do not know whether he had been with the fingerprint man for an hour and possibly we might have taken him up to jail--probably

30 to 45 minutes after we brought him into the station. I reckon it was around 2:30 when I next saw him. We took him back to the interrogation room. He might have asked for a drink, most alcoholics will. I don't think he asked for anything the first time we had been in the interrogation room. Well, I don't even know whether he asked me for a drink.

Q On those two occasions we just referred to, how did he ask for the liquor, "let me have a drink"?
OBJECTION.

I didn't state previously that he asked for liquor. I said possibly he did. Most alcoholics or drunks will ask for a drink. We kept him in the interrogation room 30 or 45 minutes on the second occasion. If I have ever heard of giving an alcoholic a drink to calm him, I never known it to be a practice. I will put it like that.

I don't remember whether I and Detective Morris or how he was carried back upstairs after the second interrogation. As far as I know he stayed up there the rest of the night.

I never told him of his right to remain silent. Detective Morris did and Mr. Harton did whenever he talked with him. Detective Morris told him about his right to counsel but he did not ask to get counsel. He did not want to use the telephone. He didn't try to call his mother. I didn't see him anymore that night after the second interrogation.

I was of the opinion that Mr. Harton (the S.B.I. agent) came the next day, which would have been the 18th, I presume. I am not sure. I probably did see him the next day after the wreck. I don't remember.

Detective Morris and I had him the same day the accident occurred in the vicinity of the Murphy School. He was kinda nerve-racking. He

was drinking, and I just didn't have any patience with a drunk. He racked my nerves because he would go this way and he would say "go that way". We came back in to Durham about 4:00 o'clock. I don't recall whether I saw him again that night or not.

MRS. MARY OAKLEY testified:

I am Mary Oakley, was formerly married to the defendant, divorced him in 1957 because of drinking and I am now remarried. He started drinking real bad about 21 years ago. He attended Alcoholics Anonymous. I saw the defendant on the 17th of November. He was drunk. It was between 1:30 and 2:00 o'clock. I had gotten off of work at 11:00 o'clock to go to Dr. Glasson. I left Dr. Glasson's office about quarter past one or twenty past. I was going towards town and saw Louis cross Duke Street. I followed him because he told me he would help have my son's teeth fixed. I started blowing my horn, he pulled over and got out of his car. I knew he had been drinking. I said "Peggie, what in the world are you doing driving like this", and he mumbled that he didn't know where he was going. I said "Well let me take you home" and he said "No". So I told him "Well, I will just see you later".

I have observed him a number of times when he was drunk. I have seen him take pills. I have seen him take little green ones. He takes pills because he gets depressed easy, gets let down, people doesn't like him or something. He just turns to drinking or whatever he can to help him. When he starts to drink he is pleasant but the more he drinks he seems like he is just two different people and doesn't know what he is doing. He does not exercise good judgment and can't recall things when he is drunk.

The day the wreck happened I got off work at 3:25 and came home. My son told me that

Louis had been in a wreck and they had him for drunken driving. I came to town and asked the jailer if I could see Louis for a few minutes. The jailer said "it wouldn't do any good because he is still drunk up there staggering and falling around", so I left. On the 19th I came back and asked the jailer again if I could see him. He said, "I am sorry, he is not here, the detectives have taken him off". I saw him the day after that. He still looked sick and nervous. I asked him what was going on? He said, "I have not done anything and there is no need for you to be worried." He was nervous, shaky, his speech was jerky, he stuttered.

CROSS EXAMINATION (By Mr. Edwards):
I didn't bring anything to the defendant.

THE COURT: I am going to let the jury go home. Let them come in.

(THE JURY IS BROUGHT IN and the following proceedings were had.)

THE COURT: We are still engaged in questions of law which you should not hear at this time. When you go out don't discuss the case among yourselves, with anyone else or read about it in the paper or listen to anything on the radio or television.

(THE COURT RECESSED at 5:12 p.m. and RE-CONVENED Friday, July 30, 1965 at 10:00 a.m.)

DETECTIVE R. J. MORRIS (Recalled)

RECROSS EXAMINATION (By the Defendant):
Out of the presence of the jury the following proceedings were had:

RECROSS EXAMINATION (By Mr. Galifianakis):
I arrested the defendant on the 18th of November for drunken driving, safe cracking and safe robbery. I charged him with two safe

crackings and the drunken driving. I can't recall when I brought him before the Magistrate or when he was brought in for preliminary hearing. I don't have any notes to refresh my recollection.

THE COURT: Wouldn't the warrant show that?

I don't have any notation of it. I don't recall how many days after he was arrested that he was brought down for preliminary hearing in Recorder's Court. I don't know when probable cause was found. I didn't take him before the Desk Sergeant. I don't recall being at the preliminary hearing or whether he had counsel at that time. I don't know whether Mr. Hatley was present at the preliminary hearing.

ATTORNEY FOR DEFENDANT: I show you these Recorder's Court Criminal Docket sheets dated November 23, 1964 are marked for identification as Defendant's Exhibits 2, 3 and 4.

FURTHER RECROSS EXAMINATION OF DETECTIVE R. G. MORRIS:

The entries are dated Criminal Docket Recorder's Court November 23, 1964, Louis Anthony Logner, Nature of Action or proceedings: Safe-cracking and safe robbery; waive preliminary hearing, bond set at $5,000. The second one, the same numbers. I am not familiar with these numbers, but I am familiar with the case by looking at the witness. I don't know when the preliminary hearing was held. I didn't take him before any Magistrate. In Exhibit No. 4 the charge is safecracking and safe robbery and November 23, 1964 is the date indicated as the hearing.

REDIRECT EXAMINATION (By Mr. Edwards):

Warrant No. 15561 issued Nov. 20, 1964 for safecracking and safe robbery for Louis A. Logner STATE'S EXHIBIT NO. 6.

Warrant No. 15466 issued Nov. 18, 1964 for violation of State Motor Vehicle Law for Louis

A. Logner STATE'S EXHIBIT NO. 7.

Warrant No. 15465 issued Nov. 18, 1964 for Driving Drunk for Louis A. Logner. STATE'S EXHIBIT NO. 8.

On November 20, 1964 I arrested the defendant and signed the warrant marked State's Exhibit No. 6.

That is my signature and that is the warrant I issued. On November 18 I charged the defendant with driving drunk and with improper registration.

RECROSS EXAMINATION (By Mr. Galifianakis):
Durham Police Department Arrest Record No. 6366 for Louis A. Logner is marked DEFENDANT'S EXHIBIT NO. 6.

Exhibit No. 6 is an arrest blotter for safecracking and robbery. The time of arrest was 5:05 p.m. on 11-18-64. That is what I testified to. (Exhibit No. 6 was introduced into evidence and showed that the defendant was arrested on 11-18-64 and booked 11-20-64 for safecracking and robbery; the complainant was R. G. Morris. It indicated the following prosecuting witnesses: R. L. Williford, Oxford, N. C., Chief D. E. White, Oxford, L. M. Harton, S.B.I., Detectives R. G. Morris and J. S. Hatley.

REDIRECT EXAMINATION (By Mr. Edwards):
I don't recall having told the defendant that he was under arrest for safecracking of the McCracken Oil Co. safe.

RECROSS EXAMINATION (By Mr. Galifianakis):
I am not changing my story. I arrested him on the 18th for drunken driving.

MR. LOUIS A. LOGNER (Recalled by the State):

RECROSS EXAMINATION (By Mr. Edwards):
I am still Louis A. Logner and have been

arrested on numerous occasions for various offenses. I have just finished a sentence for breaking and entering and larceny. I was on parole and my parole was revoked in '63. I was represented by a lawyer. For illegal possession of non-tax paid whiskey in 1955, I didn't have a lawyer. I have been before the court on a large number of cases. I didn't know that you didn't have to make any statement unless you wanted to. I have never been told that in any of my arrests. I never heard that I was entitled to a lawyer. I have always pled guilty in everything I have ever been charged with. I plead guilty to breaking and entering in 1959, illegal possession of non-tax paid whiskey, receiving stolen goods in 1956 and plead guilty to larceny in 1952. I was represented in 1952. I plead guilty to breaking and entering and larceny cases in 1952.

REDIRECT EXAMINATION (By Mr. Galifianakis):
I have been charged for public drunk many times and plead guilty to all of them. In 1952 we broke into some automobiles drunk.

In the past my mother employed Mr. Reid to represent me and my mother employed Mr. Patton to represent me.

RECROSS EXAMINATION (By Mr. Edwards):
The last time I was convicted of public drunkenness was in 1958.

(DISCUSSION BETWEEN THE COURT AND COUNSEL)

THE COURT: Let the record show that the court finds as a fact that the defendant Mr. Louis Anthony Logner was arrested about 11:30 o'clock a.m. in the city of Durham by officers, Detective R. G. Morris and Detective J. S. Hatley on the charge of driving a motor vehicle upon the highways of the State of North Carolina while under the influence of intoxicating liquor; that he was carried to the police station in the City of Durham where he was informed by Detective Morris that he had a right

to remain silent and make no statement to him, that he had a right to counsel, and that the defendant while under the influence of intoxicating liquor was aware of his rights under the Constitution of the United States and of North Carolina to have counsel and to remain absolutely silent.

The court further finds as a fact that on the evening of the 18th of November 1965 after supper Mr. L. M. Harton, an officer of the State Bureau of Investigation, and an officer for some nine years, came to the City of Durham and that he saw the defendant Louis Anthony Logner and that Mr. Harton advised him, that is the defendant Louis Anthony Logner, that he had a right to remain absolutely silent and make no statement to him, and further advised him he had a right to have and consult with counsel, and that the defendant replied that he didn't need one; that at the time at 11:30 and for some time thereafter on the 18th day of November 1964 the defendant was under the influence of intoxicating liquor but that such intoxication on the part of Mr. Louis Logner did not amount to a mania and that it was further testified by Mr. Harton that he smelled intoxicating liquors on the defendant but that he was not drunk, and that the defendant Logner was aware of the statement made to him by Mr. Harton and in reply made certain statements.

The court further finds as a fact that Mr. Logner was not furnished any intoxicating liquors by any police officer or by anyone else that can be identified in court.

MR. GALIFIANAKIS: He testified that the box was on the bed of the defendant and that he drank it.

THE COURT: That is right. Therefore, the court concludes that the admissions of the defendant Logner made to officers Morris and S.B.I. agent L. M. Harton should not be excluded from the evidence but that the in-

toxication of the defendant at the time when making the admission would go to the weight and credibility of the admission which is exclusively within the province of the jury.

The court further finds as a fact that a warrant was duly issued for the defendant on the 20th day of November 1964 charging him with the crime of safecracking in connection with the property of McCracken Oil Company and served on the defendant on the 20th day of November 1964 by Officer R. G. Morris; that on the 23rd day of November 1964 the defendant was given a preliminary hearing and was bound over to Superior Court for the Grand Jury; further, that none of the Constitutional rights pled by the defendant were or have been violated and that his admission and confessions to officers Detective R. G. Morris and L. M. Harton were given freely, voluntarily, without reward or hope of reward, or any other inducement and that said statement should be admitted into evidence to be given weight by the jury to which the jury finds they are entitled.

I think that is enough findings of fact to which the defendant objects and excepts.
DEFENDANT'S EXCEPTION NO. 2

MR. GALIFIANAKIS: Motion to suppress the evidence.
THE COURT: Motion denied. Exception.
DEFENDANT'S EXCEPTION NO. 3

(THE JURY IS RETURNED TO THE COURTROOM, and in the presence of the jury the following proceedings were had):

MR. L. M. HARTON testified:

It was Wednesday night, November 18, 1964 approximately 9:00 o'clock p.m. when the defendant said that on Monday night, November 16, 1964, he, Claiborne McKee and a Ben Ranson

proceeded in Logner's car to Oxford; they decided the best place to hit was the McCracken Oil Company because people were paying the oil bills. They arrived about 9:00 p.m. on this Monday night and parked their car in a used car lot; that they all three got out and he and Claiborne McKee went into the fence and they cut the fence with a pair of bolt cutters; that Ranson had an automatic shotgun loaded with buckshot, and a two-way radio; that he and McKee were equipped with 357 Magnum revolvers, and they had a two-way walkie-talkie; that after cutting the fence they proceeded into the lot and they took a prize bar and opened an office window; and they prized the door open; that he and McKee had a prize bar, a sledge hammer, and a chisel, and that he hit the concrete portion of the office which enclosed the vault with the sledge hammer; but he found he couldn't get into the office vault in this manner, so he in turn took a piece of paper and some tape and taped the hole in the wall; that they decided to rip the vault door instead of punching it; that they popped the rivets off of the outer door shell, and then took the vault door and laid it down in the floor of the office. In this manner they went on into the vault and saw this vault type safe inside; that upon looking at this safe he knew that they could not rip this safe due to the construction of it, so they decided to rip the covering away from it and take it back to Durham to get it open; that they knew they could not open it themselves; that they proceeded to tear this part off so they could get to the money part of the vault--the vault safe; that while they were there that Ransom called them several times on the radio and told them, as he said "cool it", and by that he told us he meant that they were supposed to quit working on the safe at that time because some police officers were nearby; that there was a drive-in just below the McCracken Oil Company, and that they observed the officers two or three times going to this

drive-in to get some coffee; that after they had got through with this safe and took it out of the covering it was in, they took it to the front part of the office, loaded it on a dolly truck, and in this manner they rolled it to the fence and through the fence to the place where his car was sitting. At that time they loaded this in the back of his car. They then picked up Ranson and proceeded on back to Durham; that the next day they got a man in Durham here to open the safe for them by the use of a torch. In questioning him as to identity of this man he would not tell us his name. The only thing he said "Well, you will be surprised at who it was, he runs an independent garage and you would be surprised if I told you who it was". He said after opening the safe it was between $1350 and $1400 in the safe; that they paid the man who opened the safe ten per cent of this, which if my memory is correct said was $130; that he received $390 of this money for his part.

The man who opened the safe burned the checks that were in the safe, burned those up at the time he opened the safe; that after splitting the money that he took the safe and put it in the back of his car--the burned safe--and took it up to a location on a dirt road in Orange County near the Durham County line, and this is where he left the safe. At that time I believe that was essentially all he told us. He did tell us that he knowed the name of these people, that he would not testify against them, but he would come into court and admit to what he had done.

OBJECTION AND MOTION TO STRIKE ALL THIS TESTIMONY. OVERRULED. EXCEPTION.
DEFENDANT'S EXCEPTION NO. 4

When I went to Oxford on the morning of November 17, 1964, there was a hole in the fence. On the inside of the vault door there was some tool marks made by a prize tool. Logner told us about this on November 18th.

Q Did you talk to Logner further about it the next day or did you hear him make any further statements on the 19th?

A He tried to tell us on that previous night as to exact location of the safe that he had took over to Orange County, and due to this Mr. Morris, Chief of Police White, from Oxford and one or two north Durham police officers, detectives, went out and tried to find the safe at the location he told us, but we could not find it. So later during this date, which would be on the 19th, we came back to Durham and Mr. Morris got Mr. Logner and took him back out there at this time, and still took us about maybe two hours to find the safe out there, and he was the one that found it at that particular time.

CROSS EXAMINATION (By Mr. Galifianakis):

I was called in on this case on the morning of November 17, 1964 by the Police Chief of Oxford. I went to the McCracken Oil Co. that morning and investigated the premises.

I first saw the defendant on the night of November 18 at approximately 9:00 p.m. in the interrogation room. At the time, Mr. Morris and the Police Chief from Oxford were in the room. Mr. Hatley was in and out. The room used was the fingerprint room.

I had already been told the defendant confessed. He told me about the job in answer to my questions. I did not get a written confession. I knew he had been arrested for drunk driving that day and I could tell he had been drinking. He was not drunk then.

I do not remember what defendant was wearing. His speech was in my opinion about the same as on the stand. His eyes were slightly red or bloodshot.

It took me to approximately 12:00 o'clock to get the information I related from him. I also

asked him about several other safe jobs. The Chief of Police and I left together.

The defendant had a coke during the three-hour period, I believe. He asked for a drink of liquor twice while I was there. But all I recall him having is a coke.

At approximately 11:00 a.m. the next day Mr. Morris got the defendant out of jail and we went to Orange County to look for the safe. Mr. Morris, Chief of Police from Oxford and I had looked for the safe earlier without success. The safe was not where defendant had told us it was the night before. When we went out the second time, Mr. Morris took the defendant in his car. I followed in mine with the officers with me. We searched the area where the defendant took us. Mr. Morris found the safe. I was told the defendant put the safe in the trunk of the police car. The search lasted approximately two hours. The location was about twelve or fifteen miles from the police station. We returned around 1:00 p.m. We made no other stops.

The safe was taken to the police department and photographed.

I don't believe I talked to the defendant again until yesterday. I was a little disgusted with him for taking so long to find the safe.

CHARLES HUTSON testified:

I work at Amoco Automatic Transmission. I just started last Monday. I recognize the defendant who I have known two or three years.

In November, 1964 I worked at Barbee's Garage. Around 1:00 p.m. on November 17, 1964 I was asleep in the office of the garage. Larry Barbee woke me up. Mr. Logner was there. Larry asked me to watch the garage. He left with

Logner for about 45 minutes. They returned in defendant's car, a Desoto, and backed into the garage. They took a safe out of the trunk. The front door of the garage was closed. The car came in the rear door. I recognize Exhibit 4 as the safe that I saw in the garage.

They put the safe on a dolly and rolled it into the office which was on one side of the garage. There was a window about 12" x 12" in the wall of the office opening into the garage which had no glass. The office door glass panes were painted. The defendant and Barbee took a torch and sledge hammer and opened the safe by cutting a hole in it. (Witness illustrates by using Exhibit 4). They then took the money out of the safe. Then the safe was put back into the trunk of the car and they left. They were gone for about 45 minutes. When they returned, Mr. Barbee got out and the defendant drove off.

A day or two later, Mr. Morris came and took Barbee and me down to headquarters. I told Mr. Morris what I had seen. I signed a statement as to what I saw and heard.

I recall Barbee and the defendant discussing where to dump the safe. Barbee suggested a well, or dumping it off along a road. (HANDWRITTEN STATEMENT ENTERED as State's Exhibit No. 9).

That is the statement I made to Mr. Morris. (Mr. Galifianakis requests statement be read. Witness reads aloud).

I have been convicted of various criminal offenses. No one suggested that I make a statement other than the truth. No one ever promised me anything for the statement.

CROSS EXAMINATION (By Mr. Galifianakis):
I have lived in Durham since 1959 and work as a mechanic. I once worked for Marcus Rogers.

I think I testified against him at his trial. I was also the State's Witness in the case of STATE v LARRY BARBEE; also in STATE v LANE.

I have been convicted of larceny, speeding and breaking and entering.

I worked for Larry Barbee at his garage. Some nights I slept in the office. I do not recall working on November 15 or 16 but I did work November 17. I worked on a '57 Mercury in the afternoon. I was awakened by Barbee around one p.m. That is when he told me to watch the place. He left with Mr. Logner who I first saw when I woke up. They were gone around 45 minutes.

I was a witness for the State in the Barbee case. I was asked the same questions then as I am being asked now. I do not recall what time I told the jury that Barbee left the garage. I do not remember saying it was 9:30 a.m. I think it was one o'clock.

When they returned they took the safe out of the trunk of the car. Next to the garage there is a Service Station on one side and a laundromat on the other. Somebody standing on the service station can see into the garage. When they returned I was in the garage working on a car. I did not know about the safe. It was an unnatural thing for me to observe and I was slightly shocked. They did not say anything to me. I did not watch them. Only saw them roll the torch into the office.

I have never been convicted of perjury. I saw them get the safe out of the car from where I was working. I had a clear view. They did not ask me to leave. I reported what I saw to the police when they picked me up. They brought Larry Barbee and me to headquarters. I don't recall what they said. They did ask me if I knew about the safe. They showed it to me. Mr. Morris questioned me. I told him

I knew something about the safe. They picked me up after lunch and let me go around 5:30 that afternoon. I don't remember if Mr. Morris asked me if I had anything to do with the job.

I am on probation now. I think I was convicted of larceny on June 3, 1960 and of two other counts of larceny on June 9, 1960. I don't remember if I was convicted of larceny on August 26, 1961. I was convicted of driving with a revoked license and of larceny and receiving. I was also convicted of reckless driving, displaying whiskey, assault and battery on a female in September, 1964. I took an appeal on the last conviction. The case has never been tried. I also appealed a conviction for two counts of hit and run in October 1964 which has not been called. I also got three to five years in Granville County for conspiracy to break and enter. I was convicted of passing a worthless check. I appealed and that case is still pending since December, 1964. There are four or five cases still pending. I do not know why they have not been tried. There was no conversation with Detective Morris about these charges. I don't know why the officers felt I had nothing to do with it. I just told them I saw what happened. No law enforcement officer ever told me if I would testify I might not have trouble with my own case. I was not under arrest the day I was picked up.

I don't recall if I first denied knowing anything. I probably did testify in the Barbee case that I did deny at first. I might have. I gave the writing the day I was picked up. It is dated November 20. I signed it and was released. I have seen Detective Morris a lot of times since then. I don't remember testifying before that I was arrested and brought back to jail after this.

I was about 15 feet from the safe when it was being opened. Some money and checks were taken out. I saw this through the window (into

the office). I don't know how much was in the safe. They said it was $1300. I don't know why they told me. I wasn't interested.

When Larry Barbee got back after they left with the safe, we went off together to King's Department Store. Larry bought some clothes for both of us. I have known him two or three years. He bought me a London Fog. I am not related to him and only worked for him three or four weeks. He bought me the clothes out of a clear blue sky.

REDIRECT EXAMINATION (Mr. Edwards):
Mr. Morris showed me a safe when I came to the police station. I recognized and identified it as the safe I had seen previously. I told Mr. Morris what was in the safe. Mr. Morris did not tell me what was in the safe, I told him. This case has been pending since November, 1964.

MR. R. G. MORRIS testified:

I am a detective with the City of Durham and have been on the police force almost twenty years. I recognize the defendant. I have known him approximately twenty years.

I saw him on November 18th, 1964 in a parking lot off Morgan Street near one of the Am Vet's Clubs. I was in a patrol car with Detective Hatley. When I saw the defendant he was standing in front of the door to the club. I saw him two or three minutes later walking to his DeSoto parked in the lot. At this time he appeared to be under the influence of intoxicating liquor. This was approximately 11:30 a.m. We exchanged greetings. The defendant spoke a few words to me. He talked coherently.

We drove off. We observed Logner's car as it was pulling out of the lot. We followed him since he was under the influence and we were

trying to get him before he had a wreck. We heard a crash after he turned left ahead of us. We went to the accident. At least two other cars were involved. The defendant was out of his car standing somewhere around the other cars. I told him he was under arrest for drunken driving. I told him to get into the car. He walked over and got in the back seat of the patrol car. I got in the front seat and brought him to police headquarters.

Q What, if anything, did Logner say to you between the time you saw him standing outside his car at the scene of the collision until the time you got to the police station?

A Logner as soon as the--

OBJECTION AND MOTION TO STRIKE.

OVERRULED. EXCEPTION.

DEFENDANT'S EXCEPTION NO. 5

As soon as he got in the car, the defendant started talking about paying off the damages. He said he had the money. He said I knew where he got the money. I told him he didn't have to tell me anything. If he did it could be used against him. I don't recall if he commented to that.

At the police station I took him to the interrogation room in the Detective Bureau. Detective Hatley was with us. We didn't ask many questions--just listened. A few minutes later we booked him and put him in jail. In the interrogation room he told us about the Indian Trail safe job, which we knew nothing about, and the Oxford safe job. I had read about that in the paper. He told us how he went into the Indian Trail safe. Then he related to us who went with him on the Oxford job and gave us details.

Approximately 2:30 or 3:00 p.m. that afternoon we talked to him again. We took him to Orange County to Murphy School. He was supposed to show us where he had thrown the Oxford safe

from McCracken Oil Co. We did not find it.

On the way back he brought up the Indian Trail safe again and directed us to Highway 70. Showed us where a safe was down an embankment. We arranged to have the safe picked up and took the defendant back to jail. We talked to the defendant again around 8:30 or 9:00 p.m. that same day. We had him in the fingerprint room The Chief of Police from Oxford and Mr. Harton of S.B.I. were present. Also, Mr. Hatley was there most of the time.

Q What, if anything, did the defendant Logner tell you about the McCracken Oil Co., Inc. safe?
OBJECTION. MOTION TO STRIKE. OVERRULED. DEFENDANT'S EXCEPTION NO. 6

The defendant told us he, Claiborne McKee and Benjamin Ransom, an escaped convict, left Durham around 9:00 p.m. in his DeSoto and went to Oxford and parked near the McCracken Oil Co. He cut through the fence around the building with bolt cutters, went through, and opened a window. They tried first to go through a wall, but stopped and covered it with something. They broke into the vault and got the safe out of the cement encasement and put it in the car. They returned to Durham. The defendant stated he went inside the building with McKee, and Ranson stood watch across the street. They had walkie-talkies.

He stated he threw the safe in his yard on Pleasant Drive until around 1:00 o'clock the next day. He then took it to a local garage. He did not say who owned the garage or what was done to the safe. He said the safe was then taken to Murphy School and thrown out. We did not find it that day. We looked the next morning and did not find it. We then took the defendant and finally found the safe after a long search. The defendant could not remember exactly where he threw it. The defendant picked

up the safe and put it in the car by himself. We came back to Durham after telling Mr. Harton and others helping in the search that we had found the safe. The SBI agent, Mr. Harton, took the safe.

I recognize State's Exhibits 3 and 4 as the safe we found in Orange County near Murphy School and turned over to Mr. Harton. There was a plug inside the safe where it had been cut open. The defendant told us money and checks were in the safe. He mentioned around $1857. He said they burned the checks. He did not say what he did with the money.

I knew nothing about the Oxford safe job except what I read in the paper. I did not know about any hole in the fence until defendant told me. I did tell him what was in the safe before he said money was in it.

I warned defendant of his right to remain silent before he talked. I asked him if he wanted a lawyer. He made no comment about that. Just kept saying that we would have to prove what he told us.

I talked to the witness Charles Hutson on November 20 (1964). I did not tell him what was supposed to be in the safe. I brought him to the police station and showed him the Oxford safe. He identified it as the safe he saw in Larry Barbee's garage. He told about the hole cut with a torch. He related the story that he was asleep in the garage when Barbee woke him and told him to look after the place. The defendant and Barbee left for some minutes and returned with the safe which they opened. The defendant knocked the plug into the safe with a sledge hammer after it was cut. He stated the defendant took out the money and checks. He saw several one hundred dollar bills. The defendant then gave Barbee his share--about $130. He then overheard the defendant and Barbee discuss disposing of the safe. They loaded

it in the car and left. He stated they were gone around 45 minutes. Barbee got out when they returned and the defendant drove off. He said Logner drove a '58 DeSoto.

I wrote down what Hutson told me. He signed it. The statement is State's Exhibit 9. I read it to him before he signed.

Q All right, sir. Now would you please read it?

(Detective Morris reads the statement which relates the above testimony)

The statement was signed at 5:15 P.M. on November 20, 1964.

CROSS EXAMINATION (By Mr. Galifianakis):

The accident occurred on November 18, 1964 at approximately 11:30 A.M. I had seen the defendant a few minutes before in the parking lot off Morgan Street. When I first saw him, he was near the door of the Am Vet's Club. No words were exchanged. A minute or so later, we did exchange greetings. I do not remember what he was wearing. It would be hard for me to describe his condition. His eyes and manner of speech were normal. I drove off. I had not had him under surveillance. I don't remember the last time I saw him. I remember seeing him at the Am Vet's Club but I don't know how long before.

I stated earlier that I read about the Oxford safe in the newspaper. The defendant is among many suspects for safecracking.

When we left the parking lot, we turned around and came back and followed the defendant intentionally. In my opinion he was too intoxicated to drive. I decided this when I was talking to him in the parking lot. I didn't arrest him for public drunk because I didn't think he was drunk enough for that, but I did think he was too drunk to drive.

After he turned left on Chapel Hill Street we heard a crash. We did not investigate the accident. I didn't take him out of his car. He was somewhere around the accident when I walked up. I don't recall where. I called for City policeman to investigate. The defendant was not questioned about the accident as he was drunk. We left the scene in my patrol car. He got in when I told him he was under arrest for drunken driving. I do not recall him making a statement before he got in the car. The city policeman did not talk to him at the scene. The first thing I know the defendant said was in my car. He said he would pay the damage to the other cars. He said I knew where the money came from. I told him of his right to remain silent at that time. I can't recall any comment (to the warning). I then listened to him. I told him about his right to have counsel and that he could make a call. I told him this in the car. In the car he also mentioned that one of his boys had a large sum of money.

I put him in the interrogation room in the courthouse. Mr. Hatley was with us. It was around 11:45 or 12:00 noon. I did more listening than questioning. It is normal to take a drunk to the interrogation room to book him. We booked him for drunken driving. Later on that day a warrant was served on him for safecracking. We booked him at 5:05 P.M. on November 18 for safecracking and safe robbery. When we took him to the interrogation room, I do not recall the questions asked. We did ask about the Indian Trail safe. The defendant started talking from the time he got in the patrol car. His speech was clear. We told him he was there for drunken driving but he wanted to talk about safes. We stayed in the interrogation room about 30 minutes.

I don't recall him asking me for liquor at that time although he did make a request on one occasion. He did not get any coke or liquor during this time. I put him in jail after I was

through with him.

I saw him again between 2:30 and 3:00 when I took the defendant to look for the McCracken Oil safe in Orange County. Mr. Hatley went with us. The defendant directed us to Murphy School and when we got there he changed his mind for some reason and asked to go back to town.

We went to Highway 70 where we found the Indian Trail safe down an embankment. The defendant directed us to it. This safe is not the one we are talking about in this case. We arranged to have the safe picked up and then took the defendant to headquarters. We found the safe around 4:00 P.M.

We took the defendant to the fingerprint room later that day around 8:30 or 9:00 P.M. You might call it another interrogation session. Mr. Hartley, Mr. Harton of the SBI and the Police Chief of Oxford were in the room. Mr. Harton asked most of the questions. I briefed Mr. Harton when he got here as to what the defendant had told me. As I recall he asked for liquor. The defendant told Mr. Harton about the contents of the safe but he gave him a different figure than he told us. However, I can't remember everything. That is why I say as I recall. I did not take a written statement from the defendant. I did not write one out for him as I did the State's witness, because I knew he couldn't sign it. I asked him to sign a statement. He gave me no reason for refusing after he talked so freely. He was cooperative from the minute we picked him up. But I did not make any effort to prepare a statement for him to sign. I can't remember his exact words when he confessed.

The defendant told me Claiborne McKee and Benjamin Ranson were involved with him in the McCracken safe job. I believed him. We did not arrest the other two men because the defendant wouldn't testify against them. He told me that

in no uncertain terms. We investigated them (McKee and Ranson) but did not bring them to the police station. I talked to McKee on one occasion. But I have never talked to Ranson. The defendant's story was not enough evidence to pursue making an arrest. I didn't feel it was necessary to interrogate the others implicated by the defendant.

We received information about Larry Barbee from an anomymous source. We did not get this information from the defendant. We brought Charlie Hutson to the police station to question him. I found him at Barbee's garage where I went to pick up Larry Barbee. I asked Hutson to come down for questioning at the police station. He could have refused. Larry Barbee could not have refused. The difference was the information I had. I have known Hutson for several years. He has been in a lot of trouble. He has a number of charges pending against him. He told me he would testify in this case that afternoon. I didn't charge him with being involved in the case or make any accusation. I accepted his answer that he was not involved. I talked to Hutson on November 20, 1964.

When I originally arrested the defendant I did not take him before a Magistrate or a desk sergeant. I don't know if there was a finding of probable cause before the warrant was issued in this case. I think the preliminary hearing was held on November 23.

REDIRECT EXAMINATION (By Mr. Edwards):

State's Exhibit No. 6 is the warrant sworn out for safecracking. It was signed by me on November 20, 1964. That is the case now being tried. I served the warrant on the 20th of November. He was brought in for preliminary hearing on the 23rd.

RECROSS EXAMINATION (By Mr. Galifianakis):

Q And you testified earlier you booked him for the safecracking the Oxford safecracking

thing on the 18th at 5:05--
OBJECTION.
MR. EDWARDS: Objection, he didn't testify that.
MR. GALIFIANAKIS: He certainly did, it is in the record, I believe.

I don't think the booking on November 18th at 5:05 was for the Oxford safe.

STATE RESTS

(After: THE STATE RESTS)

At the close of the State's evidence, the defendant Louis Anthony Logner moves for non-suit as to the charge contained in the bill of indictment. Motion denied. Defendant excepts. EXCEPTION NO. 7

DEFENDANT'S EVIDENCE

WAYNE WATSON testified:

I am a police officer with the City of Durham. On November 18, 1964 I received a call at 12:07 P.M. to investigate an accident on the corner of Chapel Hill and Mangum Streets. I arrived at the scene around 12:12 P.M. and found that the defendant, Louis Anthony Logner had been involved in an accident with Julius Caesar Wilkerson and Hugh Mark Bass. The defendant was already in the custody of Detectives R. G. Morris and Si Hatley in their police car which was at the scene when I arrived. I talked to the other two people involved in the accident and gathered the information required for the accident report which I later filed. I did not make an attempt to talk to the defendant at the scene nor did I have the opportunity to observe him until about 15 or 30 minutes later when he was being questioned by detectives. In my opinion he was drunk at that time.

CROSS EXAMINATION (By Mr. Edwards):
I observed the defendant from the door of the interrogation room for three or four minutes. I did not hear anything defendant said nor could I smell alcohol from where I was standing as I did not get close enough to him.

REDIRECT EXAMINATION (BY Mr. Galifianakis):
I saw defendant sitting in the detective car at the scene of the accident. It is my duty in investigating an accident to get all the facts I can to put into the report.

HUGH MORTON BASS testified:

Shortly after noon on November 18, 1964 I was on my way home from my job to my house for dinner. I had stopped at a red light on Chapel Hill Street when the defendant, in attempting to make a left turn into Chapel Hill Street failed to straighten up from the turn and crashed into me. After the crash, defendant was no more than six feet from me and in my opinion he was drunk.

The detectives arrived immediately, and opening the door of defendant's car, Detective Morris or the other detective, pulled him out of the car by his arm. They held him up and put him in their police car.

I felt defendant was too drunk to drive. I base this opinion on my observation of him after the collision while he was still in his car. He could not handle the wheel and he was fumbling around and couldn't even find reverse. He was still trying to back his car up when the officers pulled him out of the car.

CROSS EXAMINATION (By Mr. Edwards):
I have lived in Durham five years and have seen defendant around town a few times but I do not know him personally, nor have I ever talked with him.

LUCIEN DUNN (Recalled):

On November 18, 1964 I was confined to the Durham City Jail having been picked up around 9:00 A.M. for public drunk on that date. I know the defendant personally and saw him on that day shortly after suppertime. When he was put in the cell I noticed he was very intoxicated. I have known him for quite a number of years and could tell he was drunk and unsteady. I am an alcoholic myself but I had been in jail long enough that day to sober up.

I spoke to the defendant and noticed he was not only unsteady on his feet but his eyes were red and speech slurred. I could hardly understand him and he did not act like he recognized me. He did say he thought he had been in a wreck. The next morning he did recognize me and inquired how long I had been in jail so apparently he did not recognize me the night before.

The defendant was very sick in the morning. Sat all slumped over and his eyes were red. I have been drinking with him and know that he takes barbiturates.

By afternoon, both the defendant and I had been transferred over to the County side. The defendant did not eat lunch upstairs. He had only been on the County side a few minutes when he gave me a candy box and asked me to take care of it. I placed it under the pillow on his bunk. I saw a few minutes later that the box contained two pints of whiskey, but I do not know who brought the box. I helped drink the whiskey there in the cell. I saw several inmates with barbiturates but did not see any in defendant's possession.

That same afternoon defendant was taken from his cell but I do not know who he went out with.

I have known defendant for 15 years and have known him to drink for periods of a month or six weeks. When he is trying to get off a drunk he takes pills to steady his nerves.

CROSS EXAMINATION (BY Mr. Edwards):
I am presently confined to the Guess Road prison, serving a term for public drunkenness. No one approached me directly to testify in this case. I do not know Claiborne McKee although I saw him once at the penitentiary. I have been in prison for many offenses since 1950.

REDIRECT EXAMINATION (By Mr. Galifianakis):
I do not recall the last time I saw defendant prior to being placed together with him in the cell.

MRS. PAULINE BOWLES (Recalled):

I am the defendant's mother. I am a licensed practical nurse. I saw my son on Tuesday, (November 17) the day before he was put in jail. He came by my house in the morning and I talked with him for a few minutes. He was highly intoxicated, and I have seen him that way many times before. He was foaming at the mouth as he does when he is acutely intoxicated.

My son has not been in good health for years. He has had a number of operations, (hernia and hemorrhoid), and has received head injuries. He was discharged from the Navy after only three months after having been treated for psycho-neurotic trauma.

I did not see my son again after he came to my house that Tuesday morning until I saw him at the jail. I had gone to the jail to visit but was told by the jailer that he had been taken out. While I was there, Detectives Morris and Hatley brought him back and I talked with him a few minutes in their presence before

they locked him up. My son was groggy and not himself. I saw him the next day and he was still not feeling well. He had been o a tremendous drunk over a period of several weeks prior to the Tuesday morning I saw him at my house, the 17th of November.

I employed counsel for my son although it was a few days--possibly in the next week-- before I discussed this matter with my son.

It was after 9:00 A.M. when my son left my house on November 17. This was the day that Charles Hutson testified that my son was at Barbee's garage.

CROSS EXAMINATION (By Mr. Edwards):
I offered to call a cab for my son the morning he was at my house. When he drove off, he went through a public alley to another street. The alley is several blocks long and about ten feet wide.

LUCILLE VERRICCHIA testified:

I am self-employed at City Ice Cream Co. I know the defendant personally. I saw him on Tuesday morning, November 17, between 9:30 and 10:00 A.M. when he came in my store. I noticed Mr. Logner had been drinking. His eyes looked peculiar. He asked me about a garage across the street. He was very talkative and he stuttered a little. He stayed around fifteen or twenty minutes.

Later, I left my store to go up Mangum Street about a block to my apartment to check on my husband who is ill. As I passed the Union Sports Shop located several doors up Mangum I saw the defendant talking with some men inside. It was about 10:15 A.M. I went into my apartment and then walked uptown to the Guaranty State Bank where I made a deposit. Then I returned to the store. When I passed the Sports

Shop, Louis Logner was still inside. It was now maybe 11:00 o'clock.

Around 1:00 P.M. that same day, I called home and my husband did not answer. I stepped out onto the sidewalk to see if I could see my husband on the porch. He was on the sidewalk in front of the Sports Shop talking to the defendant, and two other men.

I did not see the defendant again until this trial started.

CROSS EXAMINATION (By Mr. Edwards):

The defendant asked me about the garage across the street, Ray's Auto Shop which was closed on the occasion. This was on Tuesday; Ray opened his shop sometime after 1:00 P.M., but I did not see him actually open. I was not keeping track of the time.

I do not know who the men were that the defendant was talking to in the Sports Shop. I did not recognize them and as far as I know I had never seen them before. However, I could recognize Louis. He was the closest to me, and I saw the left side of his face.

I know that the day in question was Tuesday because the day before I had written a check for State taxes which I posted on Tuesday. Also, I made a bank deposit on Tuesday, (November 17) and I never go to the bank more than three times a month. It is not unusual for me to go by the Sports Shop since it is on the way to my apartment.

I remember who the men were who were on the street talking to my husband and Louis Logner the defendant. I also remember the date of the 17th and that Louis had been drinking.

REDIRECT EXAMINATION (By Mr. Galifianakis):

The Sports Shop is just up the street from my store about seven stores. It is on my normal

route to go home.

MARY OAKLEY (Recalled):

I was married to the defendant on July 15, 1937 and we stayed married 22 years. Since our divorce I have remarried.

I saw the defendant before he was put in jail during the week of November 9, 1964 when he (defendant) agreed to do some painting for my husband out at the Club he ran. Defendant started painting on Monday and worked until Wednesday when he got drunk. He left and never came back.

I saw the defendant next on November 17. I had left my place of employment, American Tobacco Co., at 11:00 A.M. to keep an appointment at Dr. Glasson's. I left the doctor's office between 1:15 and 1:20 P.M. As I was driving down Chapel Hill St, I saw Louis (defendant) driving his car. I followed him and stopped him after blowing my horn. I stopped him to ask him to help with getting my son's teeth fixed. He got out of his car and came back to mine. I saw that he was drunk. I told him he ought not to be driving and offered to take him home. He refused, so I left him.

I could tell he was drunk because he staggered when he got out of his car; his eyes were red and his speech blurry. I could smell alcohol on him. He does take pills, but he did not take any that I saw during our talk which lasted around five minutes. I would say I left him around 1:45 P.M.

I tried to see him again on Wednesday the 18th when I heard he was in jail but the jailer prevented me.

Q You made an effort to see him and did not see him, is that correct?

OBJECTION.
THE COURT: She has already said she couldn't see him.

On the 19th I did get a chance to talk to the defendant briefly. The detectives had him out and were bringing him back. He was sick and nervous and his eyes were red. He looked as if he felt real bad. That is the last time I saw him.

CROSS EXAMINATION (By Mr. Edwards):
The defendant told me he did not want or need anything when I spoke to him on the 19th.

REDIRECT EXAMINATION (By Mr. Galifianakis):

LOUIS ANTHONY LOGNER (Recalled):

I am the defendant in this case. I have been in trouble before mostly for public drunk. I have been convicted of breaking and entering, larceny and assault but I have never been charged with safecracking.

I remember having whiskey when I was seven years old. I get drunk by drinking liquor or beer and wind up drinking canned heat, shellac or anything with a kick. I take any pills I can get my hands on, usually syndrox tablets or stimulants.

I recall the day I had the wreck. (Nov. 18, 1964). In the morning around 6:30 or 7:00 I went to Jimmie Young's where I drank and then took a nap until around 11:30 A.M. I drank some more and left Jimmie's around 12:00 noon and drove to the Am Vet's Club on Morgan Street. The club was still closed and so I sat in my car in the parking lot.

Detectives Morris and Hatley drove past my car. They came back a few minutes later. Mr.

Hatley started to get out of the car, but instead they drove off again. I started my car and pulled off. I drove to Chapel Hill Street and when I went to turn left at a stop light I was so drunk and "pilled up" that the turn threw me over in the seat and I crashed into two cars. A few seconds later Morris and Hatley took me out of the car and to the police station.

At Jimmie Young's that morning I had been drinking wine, liquor and taking syndrox pills, called "green hornets". I take these pills to stay awake when I am on a drunk.

I did some painting at the Am Vet's Club but I do not recall the date. It was about two weeks before I had the wreck. I had started drinking and taking pills at that time.

On the morning of the 17th of November I went to my mother's and talked with her a few minutes around 8:30 A.M. I then went to North Durham--Five Points. I went in the City Ice Cream Co. and talked to Lucille Verricchia. I got a bottle of beer and hot dog at the ice cream company. After 20 minutes or so I left. It was around 9:00 A.M. I went next door from the ice cream company to the barber shop. Talked to the owner a few minutes and then went to the sports shop five or six buildings up the street. I drank beer there and also took pills. I was waiting for the garage across the street to open. I left the sports shop around 12:30 or 1:00 P.M.

I saw my former wife when I was driving from Five Points. She blew the horn and I stopped. After I left her, I went to the Snack Bar on Proctor Street where I stayed 30 or 40 minutes. After that I went home until evening. I then came uptown and bought a bottle and went to the Am Vet's Club. I stayed there till around 11:00 or 12:00 P.M. I drank and took more syndrox pills. I got home around 12:00 midnight.

On the 18th, at the accident, both Detectives had to take me out of the car. They put me in their car and brought me to the police station. I did not talk to a city policeman at the wreck or afterwards. No one questioned me about the accident. I do not recall making any statements in the police car. I was never told that anything I said could be used against me or that I could have a lawyer.

Prior to the wreck, when I saw Morris outside the Am Vet's Club, he did not speak to me. I did not speak to him. Prior to the day of the wreck, I had seen Morris several times every week since June, 1964 when I got out of the penitentiary.

At the police station, I was taken to the fourth floor. I asked Detective Morris for a drink of whiskey and told him I was sick. Mr. Morris said he had never given anyone whiskey but Mr. Hatley might. Mr. Hatley left and came back a few minutes later with four two-ounce cups of whiskey on a lid or tray. I drank all four cups very quickly.

I was not given a chance to make a phone call. After I drank the whiskey my mind was blank until the next morning. The next morning I did not eat breakfast. Detective Morris took me to the fingerprint room. An S.B.I. agent, Oxford Chief of Police, Chief of Police from Goldsboro and another S.B.I. agent were there. Also Detective Brown. They did not question me but began telling me what I told them the night before. I do not remember telling them anything. I was so sick that I did not feel like talking to them. I told them to go ahead and charge me with anything--even murder. The charges they were talking about were safecracking and safe jobs. I was told I had confessed to them. I asked to be put back in jail so I could lay down.

I was not taken to my cell. I was given a

warrant which I did not read. It was something about safecracking in Goldsboro. I do not recall ever being told I had a right to remain silent or to a lawyer. I asked several times to use the phone to call my mother. I was not given a chance to use the phone.

I told the officers that I knew where a safe was located in Orange County and I could possibly lead them to it. But I told them I had nothing to do with it. I knew where the safe was located approximately because on the night of November the 16th I was with three boys from Georgia who I had met at the Am Vet's Club that summer. We were riding around about 1:30 A.M. on the 17th looking for some girls--we had been drinking--We rode in their '57 Chevrolet, which had Georgia plates, to Orange County where there are several night spots. The driver stopped on a dirt road near the old Murphy School and opened up the trunk and dumped out the safe. This was the same safe shown in the pictures here in court.

I took the police to the area on the morning of the 19th of November. I gave directions to where I remembered the safe had been dumped. It took four or five hours to find it. Mr. Morris and I put it in the car. We came back to town. At no time did I admit or confess to cracking the safe.

I do not remember being taken out of jail any more until I hired you (Mr. Galifianakis) as my lawyer. My mother hired you. After that I had contact with Mr. Morris once. He took me to the interrogation room and told me if I made a fool of him in Superior Court I would be sorry. He would ruin me for the rest of my life. He knew I had a lawyer.

I have never confessed to cracking a safe.

CROSS EXAMINATION (By Mr. Edwards):

I saw my wife in the courthouse on November

18, the day of the wreck. I do not recall if I spoke to her. I do not remember whether I saw her upstairs or downstairs.

As soon as we got to the police station (after the wreck) I told Mr. Morris I would like to call my mother. Mr. Hatley heard me ask. I do not remember anything after they gave me the whiskey. I had only been at the jail 15 minutes when Mr. Hatley gave me the whiskey. I do recall seeing my wife sometime that day after I took the whiskey.

I was in prison six years until June, 1964. I know Claiborne McKee. I was in the National Guard with him just like you in 1940. We were prisoners together in Orange County when I was on honor grade. I do not know Benjamin Ranson. I heard of him in prison but have never met him. I heard he had a fight in prison.

I do not know the names of the boys from Georgia I met last summer. I have seen them several times and their car. I drank with them at the Am Vet's. Threw some parties with them at my house about two months before this happened. They drove a '57 Chevrolet with Georgia tags. I do not remember their first or last names. I know a thousand or more of prisoners in the penal system by face. I had never seen these boys before I met them. We all split the liquor for the two parties we had. We went to the whiskey store together. Two of the three (from Georgia) were about medium height and one about my size. They all had brown hair. I do not know the color of their eyes.

On the morning of the 17th I rode around with them for several hours. I do not recall what they were wearing. We rode around for about two hours looking for girls.

I live by myself at my house. No one else was at my house that early morning. On the

night of the 16th when I was at the Am Vet's, the place was full but I can't recall any specific individual. I had been drinking that night.

On the 17th when I went to Proctor's snack bar I remember seeing Snake Brewer who works there. It was somewhere around 2 P.M. I was drunk then. I went there to borrow some paint brushes from Mr. Brewer.

To the best of my knowledge I have never made any statement to Mr. Morris and the S.B.I. agent to the effect that I took the safe from McCracken Oil Co. with Claiborne McKee and Benjamin Ranson. I don't recall telling them anything about the way I broke into the Oil Co., or that I used bolt clippers to cut through any fence. I don't recall making any statement that I took the safe to a garage in Durham. I don't remember telling the police that they would be surprised to know who owned the garage. They fed me liquor on Tuesday night or evening and my mind blanked out. I might have confessed to murder or anything else. I could not have told them about the bolt clippers cutting the fence in Oxford because I didn't know anything about it. My mind blanked out and I don't know if the fact I had liquor put information in my mind that was not there already.

REDIRECT EXAMINATION (By Mr. Galifianakis):
I have never made any statement to the best of my knowledge to any officer that I participated in the taking or cracking of this safe.

RECROSS EXAMINATION (By Mr. Edwards):
On Tuesday night, Nov. 17, I bought some girls some clothes. I don't recall their names. I don't know where they live. They picked out a dress or two and some slips at King's. This was at night before the store closed. I spent about 25 or 30 dollars. I had not been working for a week or two. I earned around $500 the

st of September. I also painted at Am Vet's d did some work for a tile company. The last y I got was for the painting at the Am Vet's. is was $30.

. ANDREW L. LACZKO testified:

I am a Clinical Director of the Dorothea Dix ate Hospital in Raleigh. I have been on the aff since 1953. I received my Doctor of Medine degree from the University of Munich and ntered this country in 1951. I received my aining in psychiatry in Raleigh and at the niversity of North Carolina and am now a mber of the American Psychiatric Association. specialty is psychiatry. Since 1958 I have een in charge of all criminal patients at e State Hospital. I have treated alcoholics.

(The court accepts the witness as an expert pecializing in psychiatry and in the treatment alcoholism).

Assuming a person consumed a large quantity alcohol at a particular time and at the me time consumed a number of pills such as ndrox, or any other type of amphetamines, I ve an opinion satisfactory to myself that ch a person's judgment would be impaired. A rson in such a state may be able to recall rtain events while still not possessing aility to exercise proper judgment. He may be ble to recall certain events that occurred o him and still not be a free agent.

A person who consumes a large amount of alohol and amphetamines may indeed become menally deranged as a result. By mentally deanged, I mean a condition that would be rearded as an acute brain syndrome. That is a ondition of the brain under which a person ecomes very confused, disorganized, disorientd and in addition may show physical evidence f the effect of the drug.

Alcoholism is regarded as a disease. Syndrox is a name given by its manufacturers to an amphetamine preparation. It is a stimulant or pep pill. Alcoholics like to take amphetamines, like syndrox, to ease their hangovers when they feel sluggish and let down.

CROSS EXAMINATION (By Mr. Edwards):
No questions asked..

REDIRECT EXAMINATION (By Mr. Galifianakis):
I have seen this particular defendant at the Dorothea Dix Hospital. His record, which I have in front of me, shows he has been a chronic alcoholic for many, many years. The record incorporates the record of the Navy Hospital in Great Lakes which shows defendant had a disorder in 1943 known as psychoneurosis traumatic. This disorder is one whereby the emotions or emotional responses to life are changed. Most common example is fear. The American Psychiatric Association does not regard this as a diagnosis any longer although it was common in 1942. Used by military to describe the condition of a man exposed to some trauma, as combat, explosion or other danger.

RECROSS EXAMINATION (By Mr. Edwards):
His record shows he was injured in the Navy as a result of a drunken brawl.

The defendant could not have known about the fence being cut in Oxford, in my opinion, by reason of the fact he got drunk.

WILLIAM HUTSON testified:

I live at 907 Bunn Terrace but am presently serving a prison term at the Hillsboro Prison Unit for conspiracy and receiving stolen property. I have been convicted in the past of assault with a deadly weapon and breaking and entering.

I am the brother of the State's witness, Charlie Hutson who testified yesterday. I know Detective Morris and had occasion to talk with him in March, 1965 at the Prison Camp concerning some trouble I had been in.

After he was through questioning me, Detective Morris told me my brother was not in on any safe job, as I had heard. He told me the police needed more evidence to get the defendant and if he beat the case they would nail him on something else. He did not directly say he had promised my brother something to testify for the State, but he hinted the fact. He said my brother had a lot of cases pending against him and that he (Det. Morris) was trying to help my brother. He told him that he would help him if he stayed in North Carolina and testified against the defendant.

CROSS EXAMINATION (By Mr. Edwards):

I have known the defendant since '59 or '60. I do not know Claiborne McKee or Benjamin Ranson. I told Louis Logner about my conversation with Morris in April while I was in Durham jail. I had overheard a conversation about his case. I sent for Detective Morris for personal reasons. However I have never "copped out".

MRS. BETTY KERNODLE testified:

I am Medical Records Librarian at Duke and have held this position since 1947. Our department is responsible for keeping the medical case records. I have a record on the defendant with me. This page dated 11-15-54 is a true photostat of a page in his original file--(Defendant's Exhibit No. 7 received into evidence) An impression is given on this page concerning defendant that he is a chronic alcoholic.

MRS. PAULINE BOWLES (Recalled by Defendant):

I have given my son money on occasion. I recall giving some $90 to have his car fixed. When he was in trouble I always hired counsel. I hired counsel this time.

REDIRECT EXAMINATION (By Mr. Edwards):
Larry Barbee was the person who fixed my son's car.

THE DEFENDANT RESTS.

STATE IN REBUTTAL

MR. R. G. MORRIS (Recalled):

No one in my presence ever gave the defendant any intoxicating liquor. The defendant did not ask permission to use the telephone either of me or anyone in my presence.

CROSS EXAMINATION (By Mr. Galifianakis):
I asked defendant if he wanted to use the telephone in the Detective Bureau. He was capable of dialing a number.

MR. J. S. HATLEY (Recalled)

I am a detective for the Durham Police Department and have been on the force 25 years. I saw the defendant in November 1964. At no time have I ever offered him intoxicating beverages. If defendant ever asked to use the telephone, I do not remember it. I did not deny him the use of the 'phone.

CROSS EXAMINATION (By Mr. Galifianakis):
There is no telephone in the interrogation room but there is one just outside. I did not point the phone out to the defendant. He possibly asked me for liquor in the interrogation room. To my knowledge he was given no refreshments. It is not customary to serve refreshments. He might have had a drink of water from

the sink in the room.

(Out of the presence of the jury, the following took place. Upon agreement, pages 2, 3, 4, 5, 6, 7, 8 first eleven lines of 9, 13, and 14 of the transcript of the trial of STATE v LARRY W. BARBEE was introduced into evidence as Defendant's Exhibit No. 8. The jury returned

MR. GALIFIANAKIS: This transcript offered for purpose of impeaching the testimony of Charles Hutson. Mr. Galifianakis reads from the transcript of testimony of State's witness, Charles Hutson, who also testified in STATE v LARRY BARBEE relating to the safecracking:

I am Charles Hutson. I have known the defendant Larry Barbee for about 3 years. I saw Larry Barbee on November 17, 1964 at his garage on Hillsboro Road where I was working with him. I was there at approximately 1:00 p.m. on that afternoon. I had not been sleeping on that day, the 17th, on that day I saw Larry, myself and Louis Logner. Larry told me to watch the garage. He went off with Logner and they were gone about 45 minutes. When they came back in a Chrysler or DeSoto they had a safe in the trunk of the car. They took it out and put it in the office and they cut a hole in it with a acetylene torch.

It was about 9 or 10 o'clock in the morning when Mr. Logner came for Barbee. Logner told Larry to come and go with him and Larry told me to watch the garage. He left me in charge of the garage. They were gone about 45 minutes. This was in the morning.

EVIDENCE CLOSED

At the close of all the evidence, defendant moves for judgment of nonsuit as to the charge in the indictment. Motion denied. Exception. DEFENDANT'S EXCEPTION NO. 8

MR. EDWARDS No sir.
THE COURT: You may take the case and say how you find the defendant, guilty or not guilty.

(The jury retires to deliberate upon the case at 4:25 p.m. At 4:50 p.m. the jury returns into open court with their verdict:)

CLERK: Ladies and gentlemen of the jury, have you reached your verdict?
JUROR: We have.
CLERK: What say the defendant, Louis Anthony Logner, is he guilty as charged or not guilty?
JUROR: Guilty.
CLERK: This is your verdict, so say you all?
JUROR: (All jurors indicate affirmatively)
MR. GALIFIANAKIS: The defendant moves to set aside the verdict as being contrary to the evidence.
THE COURT: Motion denied.
EXCEPTION NO. 10

MR. GALIFIANAKIS: I would like to also make a motion to set aside the verdict for errors committed in this cause, assigned and to be assigned.
THE COURT: Motion denied.
EXCEPTION NO. 11

(JUDGMENT): Let the defendant be confined to State's Prison at hard labor for a term of not less than ten years or more than fifteen years --in your custody.

MR. GALIFIANAKIS: I would like to give notice of appeal to the Supreme Court.

THE COURT: Notice of appeal to Supreme Court made in open court. Further notice waived. Defendant is allowed sixty days in which to make up and serve statement of case on appeal. The

State is allowed thirty days thereafter in which to file countercase or exceptions.

Appeal bond set at $200, and appearance bond set at $10,000.

GROUPING OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

The defendant, appealing, assigns error as follows:

ASSIGNMENT NO. 1:
The action of the court in refusing defendant's motion to suppress the evidence on the voir dire examination of State witnesses Harton and Morris relating to what the defendant did and what the defendant said to them, said evidence being incompetent contrary to law and violative of defendant's constitutional rights as shown by Defendant's EXCEPTION NO. 1 (R p 11); DEFENDANT'S EXCEPTION NO. 2 (R p 37); DEFENDANT'S EXCEPTION NO. 3 (R p 37).

ASSIGNMENT NO. 2:
The action of the court in overruling defendant's objection to the State's evidence (testimony of S.B.I. agent, Harton and Detective Morris) as to what the defendant did and what the defendant said to them, said evidence being incompetent, prejudiced, contrary to law, and violative of the defendant's constitutional rights, as shown in DEFENDANT'S EXCEPTION NO. 4 (R p 39); DEFENDANT'S EXCEPTION NO. 5 (R p 46); DEFENDANT'S EXCEPTION NO. 6 (R p 47).

ASSIGNMENT OF ERROR NO. 4:
The action of the court in denying the defendant's motion for judgment as of nonsuit at the end of the State's evidence, and at the end of the Defendant's evidence when the motion for judgment or of nonsuit was DEFENDANT'S EXCEPTION NO. 7 (R p 53) and DEFENDANT'S EXCEPTION NO. 8 (R p 70).

ASSIGNMENT OF ERROR NO. 5:

The court in charging the jury, failed to properly charge on the law and evidence relating to the voluntariness or involuntariness of the defendant's acts and statements as shown in DEFENDANT'S EXCEPTION NO. 9 (R p 90).

ASSIGNMENT OF ERROR NO. 6:

The action of the court in overruling the defendant's motion to set aside the verdict as being contrary to the evidence, as shown in DEFENDANT'S EXCEPTION NO. 10 (R p 94).

ASSIGNMENT OF ERROR NO. 7:

The action of the court in overruling the defendant's motion to set aside the verdict for errors committed in this cause, assigned and to be assigned, as shown in DEFENDANT'S EXCEPTION NO. 11 (R p 94).

STIPULATION OF COUNSEL

It is agreed that the statement of case on appeal and counterstatement were duly filed as required by the appeal entries made herein; and it is further stipulated by and between counsel for the defendant and Solicitor for the State that all captions and verifications herein need not be printed; and that the foregoing does constitute the statement of case on appeal to the Supreme Court of North Carolina.

This 1st day of November, 1965.

/s/ Daniel K. Edwards
Solicitor, Tenth Solicitorial District

/s/ Nick Galifianakis
Attorney for the Defendant

(TRANSCRIPT CERTIFIED BY CLERK SUPERIOR COURT)

Appendix F

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GREENSBORO DIVISION

LOUIS ANTHONY LOGNER, Petitioner	
v.	NO. C-130-G-66
STATE OF NORTH CAROLINA, Respondent	ORDER

On November 29, 1966, an Order was entered by the undersigned, for the reasons stated in a Memorandum Opinion entered on the same date, directing the release of the petitioner, Louis Anthony Logner, unless the State of North Carolina elected to retry the petitioner by May 25, 1967. By petition filed April 26, 1967, by the Honorable Daniel K. Edwards, Solicitor for the Tenth Solicitorial District of North Carolina, a further hearing was requested. An Order was entered by the Court on May 9, 1967, directing that Mr. Edwards file a Memorandum Brief supporting the petition for rehearing and specifically requiring incorporation therein those points desired considered at a rehearing.

On June 8, 1967, Mr. Edwards filed his brief and on June 26, 1967, counsel for the petitioner, Louis Anthony Logner, filed a brief in answer to the petition for rehearing.

The only contention of merit in the petition for rehearing is that, as amended, Title 28 U.S.C.A. § 2254 requires this Court to accept the findings of fact as found by the state

court unless one of the eight exceptions there listed exists. The findings of fact by the state court were not altered by the findings of fact by this Court. The hearing on the facts was held by reason of the request of the Respondent, State of North Carolina, to be heard. While federal courts can adopt findings of fact by state courts, they must apply the applicable federal law or standards. Whether the confession was voluntary is not a question of fact for this Court, but a question of law to be determined by this Court under announced federal standards. Upon the same facts as the state court and applying federal standards, as this Court interprets them, it was concluded by the undersigned, with the utmost respect for the opinion of those who differ, that the confession was involuntary.

Now having considered the petition for rehearing, briefs, the entire official file, and being of the opinion that the petition for rehearing should be denied;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the petition for rehearing be and the same is, denied; that copies of this Order be sent to the Honorable Daniel K. Edwards, Solicitor; Counsel for the petitioner; and the Attorney General of the State of North Carolina.

Eugene A. Gordon
United States District Judge

A True Copy
August 9, 1967
Teste:
Herman Amasa Smith, Clerk
By: Ruth L. Mitchell
Deputy Clerk.